

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Delaware, Lackawanna & Western Railroad, that Agent D. W. Reese's name be shown on the telegraphers' seniority roster of the Scranton Division with a date of November 1, 1937, the date he first occupied a position covered by the telegraphers' agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of May 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The telegraphers' agreement (wage scale) at page 24 lists:

Plymouth	Agent-Operator	\$205.20 per mo.
	Clerk-Operator	.73 per hr.

NOTE: These rates increased by 19¢ per hour subsequent to the effective date of the current agreement.

Mr. D. W. Reese, without previously earned telegraphers' agreement seniority, was appointed to the Plymouth agency, Scranton Division, which was then outside of the Telegraphers' Agreement, November 1, 1937.

Effective December 1, 1939, resulting from negotiations, the Plymouth agency (Agent-Operator position) was incorporated in the telegraphers' agreement.

POSITION OF EMPLOYES: The Telegraphers' Agreement, hereinbefore referred to, contains, among others, the following rules which are applicable to the instant proceedings:

"Rule 1—Scope.

Effective May 1, 1940, the following rules and working conditions will apply to telegraphers, telephone operators (except switchboard operators); Agents, as shown in the rate schedule; Assistant Agents; Agent-Telegraphers and Agent-Telephoners; towermen, levermen, tower and train directors, wire chiefs, Managers of telegraph offices and operators of mechanical telegraph machines installed for the purpose of replacing telegraph communication, hereinafter referred to as employees."

"Rule 16—Seniority and Promotions.

(f) Seniority begins at the time the employe starts to work in the class in which he is regularly employed.

This defect is fatal to the Employees case and goes to the jurisdiction of the Board.

"It is my opinion that the interpretation of the contracts or rules between the employer and employees heretofore or hereinafter entered into is the jurisdictional foundation of this Board."

Award 42—Third Division

While the circumstances shown above completely dispose of the Employees' claim, the Carrier also shows to the Board that the claim is not brought in good faith nor for the purpose of protecting Mr. Reese's seniority. The ulterior purpose of it is to sabotage Mr. Reese's right to the Plymouth job (in destruction of the above recited agreement) by engineering him onto the roster with a late seniority date which will give other men an opportunity to claim the right to displace him, groundless though such claims may be. The Carrier refused to be a party to these back-stabbing tactics designed to destroy the rights of this old employee who has worked for it since 1913. Hence, this claim was brought to the Board on the chance that the Board may effect the destruction of this man's rights, and, incidentally, those of others who like him have purchased homes and planted family roots in their respective communities in justifiable reliance upon the agreed-to construction of the agreement.

The Carrier confidently submits that this Board will not destroy this man's rights on the Clerks' roster by sustaining this groundless claim.

OPINION OF BOARD: This case is companion to TE-2830 Award 2839, on the issue whether Carrier can claim an oral contract exempting from the seniority rule, incumbents of the agency position in question. We there fully discussed this question and determined that such an oral contract cannot modify or contradict the printed agreement of rules. It would be useless repetition to cover the same ground and it is sufficient with respect to this issue to adopt the discussion of TE-2830 by reference. We must assume, therefore, that the terms of the printed Agreement of May 1, 1940 apply. The remaining issue is whether under those rules Agent Reese's name should be shown on Telegraphers' seniority roster with date of November 1, 1937.

From February, 1913 to November 1, 1937, Reese was accumulating seniority rights under a Clerks' Agreement, the terms of which are not before us. Effective December 1, 1939, the Plymouth Agency position along with others, was placed under Telegraphers' Agreement and was included in the printed Agreement effective May 1, 1940. Rule 16 (f) provides that seniority begins at the time employee starts work in the class in which he is regularly employed. Since Reese entered the service covered by the Telegraphers' Agreement on November 1, 1937, his seniority under the above rule properly began on November 1, 1937, and his name should be shown on seniority roster as of that date.

Rule 16 (g) provides that seniority rosters of employees on each division will be revised in January of each year and a copy sent to each officer and to the General and Local Chairman. Admittedly this has not been done so as to show Reese's name on the roster. We believe Organization is clearly entitled to have the rule complied with under the facts as shown by the record so that all employees who may be henceforth affected may know just what their position is as to seniority.

Carrier asserts that it never agreed to put Reese's name on the roster and that the claim could not be adjusted until Employees furnished proof that Carrier's officers had so agreed. Whether Carrier agreed to put Reese's name on the roster or not is immaterial. The rule requires it to do so and it was its duty, in compliance therewith, to put the name of Reese on the roster and to publish the roster as the rule also prescribes.

It is asserted that because the position was placed under Telegraphers' Agreement on December 1, 1939, the printed rules of May 1, 1940 do not apply because they contain no provision for retroactive application. We be-

lieve such a construction does violence to the language and to the broad purpose of the Agreement. The language of 16 (f) plainly indicates that it was contemplated by the Agreement that prior years of service in the designated class be considered in determining seniority. It does not seem reasonable that the parties intended that prior years of seniority established in the scheduled class, should not be considered in the determination of seniority.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement as charged.

AWARD

Reese's name shall be placed on the roster as of November 1, 1937.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 8th day of March, 1945.