

Award No. 3601

Docket No. TE-3458

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert B. Rudolph, 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 on the Delaware, Lackawanna & Western Railroad Company that the names of E. M. Dotten and James Billington were improperly and unilaterally removed from the seniority roster issued during January, 1941, under the telegraphers' agreement on the Morris & Essex Division by the Carrier, and that the names of these two employes shall be restored to said seniority roster with ratings commencing November 8, 1920, and June 1, 1936, respectively, the dates on which these employes last entered in continuous service on positions covered by the said telegraphers' agreement, which positions were incorporated therein on June 1, 1938.

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 at page 13 lists the following positions at Hoboken:

Position	Rate per Month
Asst. Ticket Agent	\$210.00
Third Ticket Agent	199.20

These rates of pay were increased under the provisions of the 1941, 1943 and 1946 general wage increase agreements.

E. M. Dotten, according to records available to the Organization, entered service of the Carrier September 7, 1918, in positions not covered by a telegraphers' agreement. November 8, 1920, according to the bond record, Mr. Dotten began the occupancy of the position identified in the preceding paragraph as "Asst. Ticket Agent," not then covered by any collective-bargaining agreement and has continuously since that date remained thereon. Effective June 1, 1938, said position, by agreement in accordance with the provisions of the Railway Labor Act, was incorporated in the then existing telegraphers' agreement and re-incorporated in the May 1, 1940 agreement. Mr. Dotten's name was shown on the 1939 telegraphers' seniority roster with the date of January 1, 1938. The 1940 telegraphers' seniority roster listed Dotten's name with the date of June 1938. The Carrier unilaterally eliminated that name from the 1941 telegraphers' seniority roster and continuously since has declined to restore said name to said roster.

Since Messrs. E. M. Dotten and James Billington began work on telegraph scheduled positions, November 8, 1920, and June 1, 1936, respectively, it follows that in accordance with Rules 16 (f) and (g) their names must be shown on the telegraphers' seniority roster with those established dates; otherwise, violence will have been done to the agreed-to-rules and damage done to the employees.

POSITION OF CARRIER: The claim is identical with that in Award 2967, Docket TE-3172, wherein this Board dismissed the case upon withdrawal of the claim by the Organization.

The Carrier, therefore, refers to its Submission in that case as if fully incorporated herein, since the instant case is merely a **resubmission** of that dispute, as indicated by the following letter from Mr. Slocum (Organization) to Mr. Shoemaker (Management) dated May 16, 1946:

"Please be referred to exchanged letters between the National Railroad Adjustment Board, Third Division, with copies to us, in connection with Docket TE-3172, when on October 19, 1945, we requested the dispute be dismissed without prejudice to either party, hence on October 25th, 1945, Award No. 2967 was rendered to this effect.

"It is our desire to **resubmit** the dispute for a decision, and the Carrier is invited to join us.

"May I have your reply at an early date."

OPINION OF BOARD: This dispute concerns the seniority of E. M. Dotten and James Billington, the occupants of two positions under the telegraphers' agreement on the Morris and Essex Division of the Carrier. The two positions were not incorporated in the Telegraphers' Agreement until June, 1938. At the time these positions were brought under the Agreement the Carrier advised the Union, "It is understood, however, that the present incumbents of these positions cannot be displaced by other employees coming within the scope of your agreement so long as they choose to remain in their present positions." The January 1939 telegraphers' seniority roster carried the names of Dotten and Billington with seniority date of January 1, 1938. This date was questioned (by whom does not appear in the record) and the 1940 roster, by agreement of the parties, carried the two names with a seniority date of June 7, 1938. The 1941 roster and all subsequent rosters have failed to credit Dotten or Billington with telegraphers' seniority. The organization is now contending that the names of these two men should be restored to the telegraphers' roster; Dotten with a seniority date of November 8, 1920 and Billington with a date of June 1, 1936.

Neither Dotten or Billington is here questioning his standing on the telegraphers' roster. Nor have any of the employees whose seniority standing would be affected by granting the organization's request been served with notice of this claim. As a matter of propriety, therefore, if not of jurisdiction we are not inclined to grant this claim to the extent contended for by the Union. While it might be that those apparently adversely affected in their seniority standing by any award made herein are not bound by such award unless they have been given notice and an opportunity to be heard, nevertheless, we believe that this Board should be hesitant to act in any manner which appears detrimental to parties not before it.

We think it clear that with the incorporation of the two positions in the Telegraphers' Agreement, the occupants of such positions came under the Agreement and were accumulating seniority as telegraphers. If, as contended by Carrier, they are not subject to displacement by other employees under the Telegraphers' Agreement, this fact does not prevent them from accumulating seniority as telegraphers after the positions are brought under the agreement. Rule 16-(g) provides for seniority rosters, and in our opinion contemplates that the names of those accumulating seniority should appear upon such roster. If it were within the rights of the Carrier, as Carrier con-

tends, to place on such roster only the names it wished to place thereon there would be no object to Rule 16-(g). Employee's submission discloses that prior to the issuance of the 1940 roster, "it was agreed to by the parties" that Dotten and Billington each should have the seniority date of June 7, 1938. The letter from the General Superintendent which brought these two positions under the Telegraphers' Agreement is dated June 7, 1938. We believe, therefore, it is clearly established that Dotten and Billington have a seniority date as telegraphers commencing as of June 7, 1938, and that such fact should appear on the seniority roster.

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 the Carrier violated the Agreement when it removed from the seniority roster the names of E. M. Dotten and James Billington.

AWARD

That the Carrier shall restore to the seniority roster the names of E. M. Dotten and James Billington each with a seniority date of June 7, 1938.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1947.