

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

UNION PACIFIC RAILROAD COMPANY

(South-Central District)

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on Union Pacific Railroad, South Central and Northwestern Districts::

1. That E. G. Fowler, who was denied the position of agent at Long Beach, California, bulletined for applicants on bulletin No. 118 of October 16, 1945, was sufficiently qualified to successfully perform the duties and responsibilities of this position for which he made application on said bulletin; and

2. That the said E. G. Fowler, who was the sufficiently qualified and senior applicant for the position of agent at Long Beach, California, on bulletin No. 118 of October 16, 1945, shall be assigned to the position as of November 1, 1945, in accordance with the provisions of Rule 2 (d) and 41 of the telegraphers' agreement.

JOINT STATEMENT OF FACTS: During October, 1945, vacancy occurred in the position of agent at Long Beach due to the retirement of Mr. T. R. Anderson, who at the time was our agent at Long Beach. The position is included in Rule 2, Schedule of April 1, 1938, as follows:

"Rule 2. Monthly rated positions. (a) the monthly rates specified for the positions listed below will cover all services rendered during a calendar month."

On page 5, Rule 2, the position of agent at Long Beach appears in Seniority District No. 10, current rate of which is \$351.13 per month. Following the list of positions, appears paragraphs (b), (c), and (d) of Rule 2, as follows:

"(b) Rules of this agreement covering assigned week day, Sunday and holiday service, overtime and calls, will not apply to the above listed positions.

"(c) Milk and cream commissions will not be paid to monthly rated agents listed in this rule.

"(d) Monthly rated positions included in this rule will be bulletined and applications considered on basis of qualifications. Applicants must be approved by the general manager and traffic department. Where qualifications are sufficient seniority will govern."

rier, that being the case we may at times make statements that are not entirely in conformity with actual facts when such statements are checked by the Carrier against an employee's personal record, as was done following the Carrier's answer to the organization's reason No. 3."

There is no point in above statement going to the issues for determination, and it is sufficient answer to inform the Third Division that there was no information requested of the carrier by General Chairman Jones of the organization pertaining to his claim in this case that was not furnished to him by the carrier's officers.

Organization's references in their position to Agent Fowler's handling of the Glendale station are irrelevant. That is not the issue in this case.

The further statements of petitioners are irrelevant and immaterial to the issue presented the Third Division. In the main, they are admitted assumptions, repetitions of preceding statements, assertions and allegations. In connection with the awards of the Third Division cited by petitioners, we direct attention to applicable findings of the Third Division on the question in issue in this case.

SUMMARY

By way of a summary, it is the carrier's position:

- (1) That Mr. Fowler, though he was the senior applicant has no valid claim in this case because of lack of sufficient qualifications to successfully fulfill the duties and responsibilities of position of agent at Long Beach.
- (2) The carrier denies the organization's charge that the actions of the carrier's officers were arbitrary and with prejudice and personal favoritisms in declining Mr. Fowler's application for the position of agent at Long Beach. Moreover, the carrier contends the organization's charges are rested upon pure assumption and are without support whatsoever.
- (3) The carrier affirmatively contends that the action of its officers in declining to approve Mr. Fowler's application for the Long Beach agency, was responsive to a full consideration of each of the three applicants and a correct appraisal of Mr. Fowler's lack of qualifications.
- (4) The carrier reaffirms here the fact that Mr. Fowler's application was not approved by the general manager or the traffic department, whereas Mr. Shepherd's application was approved by both.
- (5) Finally, the carrier contends that under all the facts and circumstances, Mr. Fowler has no proper claim in this case and that the evidence warrants a finding to that effect, and we request that the Third Division issue an award denying the claim of petitioners.

OPINION OF BOARD: This dispute involves the position of agent at Long Beach, California. The position became vacant in October, 1945. Bulletin was posted and C. T. Shepherd was assigned to the position. The claimant, E. G. Fowler, was also an applicant and is here contending that he was entitled to the position. Mr. Fowler was the senior applicant. The position at Los Angeles is a monthly rated position included in Rule 2, to which subdivision (d) of the Rule applies. Subdivision (d), Rule 2 is as follows:

"Monthly rated positions included in this rule will be bulletined and applications considered on basis of qualifications. Applicants must be approved by the General Manager and Traffic Department. Where qualifications are sufficient seniority will govern."

Under this Rule the question presented relates to the qualifications of Mr. Fowler. However, under the Rule, these qualifications must in the first instance be determined by the Carrier, and this Board reviews the action of the Carrier only for the purpose of determining whether its action was arbitrary, capricious or unreasonable—Awards 2031, 2299, 2350 and 2615.

The facts are fully set forth in the record and no purpose would be served in restating them. It is sufficient to say that from these facts we conclude that reasonable minds might differ upon whether Mr. Fowler was by his past experience and training, qualified for the position at Long Beach, which was one of the most important in the Seniority District and located in a highly competitive territory. It appears from the record that the application of Mr. Fowler was given full and careful consideration by the Carrier. There is no showing of bad faith. Under the facts presented by the record and under the Rule, this Board cannot substitute its opinion for that of the Carrier.

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 parties waived oral hearing thereon;

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 no violation of the Agreement is shown.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 17th day of July, 1947.