

Award No. 3646

Docket No. TE-3635

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY  
COMPANY**

**(Joseph B. Fleming and Aaron Colnon, Trustees)**

**STATEMENT OF CLAIM:** Claim of the Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railway; that

(1) Mary V. McGinn, the senior bidder for position of telegrapher, Minneapolis, Minnesota, which was advertised as vacant on June 15, 1940, but whose bid was not accepted and who was denied the assignment, be assigned thereto, and;

(2) That she be paid the difference between what she had earned and what she would have earned had she been properly assigned to the position at Minneapolis, Minnesota, plus an expense allowance of two dollars (\$2.00) per day under Article 19 (f) of said agreement by reason of her enforced service on positions other than the Minneapolis position.

**EMPLOYEES' STATEMENT OF FACTS:** An agreement exists between the parties to this dispute, effective January 1, 1928, covering wages and working conditions of employees covered by the scope rule thereof. Claimant Mary V. McGinn, with a seniority date of July 2, 1918, held a permanent assignment at Mason City, Iowa. On June 17, 1940, claimant bid on a permanent position at Minneapolis, Minnesota, which was advertised by bulletin dated June 15, 1940. She was denied the assignment.

**POSITION OF EMPLOYEES:** This dispute arises out of a re-arrangement of the territory of the jurisdiction of division superintendents on the Carrier, which took place on July 1, 1936. On June 30, 1936, Claimant McGinn held a regular assignment at Mason City, Iowa, located on that date on the Iowa Division. Also, on that date she was actually working a temporary assignment at Minneapolis, Minnesota, also on the Iowa Division under provisions of Article 10, paragraph (d), of the effective agreement which we now quote:

**"FILLING TEMPORARY POSITIONS.** Where temporary positions are created or where extra work is required on account of leave of absence or otherwise for thirty (30) days or more, the positions will be filled according to seniority as per Article 9. Vacancies created by the incumbents of regular positions bidding in temporary vacancies will not be bulletined but will be filled by extra men. When such work is no longer required the employee filling the temporary position or performing the extra service may return to his regularly assigned position."

On July 1, 1936, in the re-arrangement of superintendent's territorial jurisdiction, Minneapolis, Minnesota, the location where claimant was actually

or hereafter have an interest in these proceedings the Carrier submits its Exhibits "A" and "B." Exhibit "A" is the seniority roster of telegraphers on the Cedar Rapids Division revised to January 1, 1947. Exhibit "B" is the seniority roster of telegraphers on the Cedar Rapids Division revised to July 1, 1943.

To assist the Board in understanding the geographical territory of the respective divisions involved, we show a map showing the divisions as of January 2, 1936, which is marked Carrier's Exhibit "I." As explained above, the territory from Manly to Minneapolis became a part of the Cedar Rapids Division effective July 1, 1936.

In conclusion we respectfully petition your Board to dismiss the claim of the petitioner for want of jurisdiction. If, however, your Board concludes that it has jurisdiction of the subject matter, then we respectfully petition your Board to deny the claim of the employee.

The residence address of the claimant in this docket is:

Miss Mary V. McGinn  
328 South Federal Street  
Mason City, Iowa

**OPINION OF BOARD:** Although this dispute was not jointly submitted, the parties are in substantial agreement on all material facts.

The petitioner, the Order of Railroad Telegraphers, appears on behalf of claimant, Mary V. McGinn, a telegraph operator employed by the respondent, whose regular assignment with the respondent is, and was at all times herein mentioned, at Mason City, Iowa.

At the outset of our consideration of this matter, we are confronted with Mary V. McGinn's motion to dismiss this proceeding on the ground that the petitioner (the Order of Railroad Telegraphers) did not have legal authority to file a claim in her behalf.

On December 18, 1946, notice was given the Board by the petitioner (in accordance with the rules of the Board) of its intention to file an ex parte submission in behalf of Miss McGinn. On January 3, 1947, Miss McGinn filed in this proceeding a "special Appearance and Denial of Authority," in which she stated that no authority was ever given to the Order of Railroad Telegraphers or any official thereof, to file the statement of claim in this proceeding and in which she asked that the claim be dismissed. At the oral hearing (April 8, 1947), Miss McGinn appeared and, through her attorney, again moved the Board to dismiss these proceedings and stated as a ground therefor that the petitioner has no authority to represent her. The Board reserved its ruling on the matter and proceeded with the hearing.

The evidence of record demonstrates in a legally sufficient manner that since the inception of this dispute, the Order of Railroad Telegraphers has acted under the express authority of Miss McGinn. The letter of Miss McGinn dated October 17, 1946, addressed to Mr. Kinkead, Vice President of the Telegraphers' organization, and the letter of Miss McGinn dated November 1, 1946, addressed to Mr. Leighty, President of the Telegraphers' Organization, evidence that fact. The docket further discloses that a conference between Vice President Kinkead and Miss McGinn was held at Mason City, Iowa, November 1, 1946, at which time the proposed ex parte submission of the Organization in this dispute was reviewed by Miss McGinn and certain suggestions made by her for revision thereof. The ex parte submission was revised, and a copy mailed to Miss McGinn November 11, 1946. The docket does not disclose that any exception was taken by Miss McGinn to the revised ex parte submission, which was later submitted to this Board.

The Board, after careful consideration of the plea of Miss McGinn, concludes that petitioner, the Order of Railroad Telegraphers, was clothed with the necessary authorization to represent Miss McGinn in this proceeding. Therefore, the motion to dismiss is denied.

We now pass to a consideration of the dispute proper.

The record shows Miss McGinn's case was submitted by her to the convention of the Order of Railroad Telegraphers on June 19, 1942 at which time she raised a question as to her rights under the consolidation of divisions to have her seniority on the Cedar Rapids Division. Her petition was upheld by the convention, and the officers of the Organization were instructed to handle same to a conclusion.

The then General Chairman, in conjunction with the President of the Organization, through conferences and correspondence, entered into an agreement on August 18, 1943, with the Respondent Carrier in and by which Miss McGinn's seniority was transferred to the Cedar Rapids Division, thus disposing of the entire question. That agreement reads:

"August 18, 1943

"Mr. J. Y. McLean  
Director of Labor Relations  
Rock Island Lines  
La Salle Street Station  
Chicago, Illinois

Dear Sir:

Regarding disposition of our request that Miss Mary V. McGinn be transferred to the Cedar Rapids Division:

In your letter dated July 24, 1943, you proposed that:

"This letter will serve as our advice to you that we are agreeable to making this transfer of Miss McGinn from the Iowa Division to the Cedar Rapids Division, it being understood that the position she now holds at Mason City will likewise be transferred from the Iowa Division to the Cedar Rapids Division seniority district."

This is understood to mean that for the purpose of disposing of our request, the telegraph position at Mason City, Iowa, is to be transferred to the Cedar Rapids Division, and that Miss Mary V. McGinn, the present regularly assigned incumbent of the job, will be transferred along with the job to the Cedar Rapids Division, taking her seniority with her and being allowed to continue her rights to the job after the transfer is effected, with the further understanding that thereafter she will be privileged to exercise her seniority rights on the Cedar Rapids Division, pursuant to the provisions of the Telegraphers' Agreement.

Disposition of the matter in accordance with this understanding is acceptable to us. This letter, when countersigned by a representative of the Carrier, will signify mutual acceptance.

Yours very truly,

/s/ J. F. Young  
General Chairman

For The Order of Railroad Telegraphers

Approved by:

/s/ V. O. Gardner

President—The Order of Railroad Telegraphers

For the Management:

/s/ G. E. Mallery

Supervisor of Wage Schedules"

That agreement definitely disposed of any and all claims in behalf of Miss McGinn arising out of the consolidation of divisions which took place on July 1, 1936.

**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 claim having been disposed of through negotiations and agreement on the property, this Board is bound by such agreement and cannot alter the terms thereof.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson,  
Secretary

Dated at Chicago, Illinois, this 18th day of September, 1947.