

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jay S. Parker, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of The General Committee of The Order of Railroad Telegraphers on The Pennsylvania Railroad, that Agent, T. R. Callahan, Greenville, Ohio, agency, (an asterisk (*) position in the Wage Scale, Part I, Telegraphers Agreement), "being improperly held off his regular assigned position since August 5, 1946, and further, Mr. Callahan shall be restored to his regular assignment as Agent, Greenville, Ohio, and compensated for such time as he has been improperly held out of service".

EMPLOYEES' STATEMENT OF FACT: Mr. T. R. Callahan was appointed Agent at Greenville, Ohio, Columbus Division, an asterisk (*) Agency, September 8, 1943.

On July 11, 1946, he was notified by the Supervising Agent that Mr. R. R. Robins would relieve him as Agent at Greenville, effective July 12, 1946, and in a letter addressed to Mr. Callahan July 13, 1946, the Supervising Agent notified him to attend an investigation to be held at 10:00 A. M., July 17, 1946, in connection with refusing to obey and comply with instructions given him by the Supervising Agent July 10th and 11th, 1946. Copy of transcript of this investigation is attached hereto and designated as Exhibit "A".

August 5, 1946, Mr. Callahan was advised, in writing, that he was removed from the position of Agent at Greenville, Ohio, and was further advised that he could, if he so desired, exercise seniority in accordance with Part I of Regulations governing Agents and Assistant Agents. Mr. Callahan was not physically returned to the agency position at Greenville after he had been removed from the position on July 12, 1946; however, he was compensated for all time lost from that date until August 5, 1946.

August 12, 1946, the Local Chairman docketed claim described in the subject for discussion with the Superintendent at the regular meeting to be held on September 5, 1946. Claim was denied by the Superintendent in a letter to the Local Chairman dated October 11, 1946.

POSITION OF EMPLOYEES: An Agreement is in effect between the parties, Rules and Rates of Pay in effect as of May 16, 1943 (except for adjustments). This Agreement is divided into Two Parts, Part I governing the working conditions of Agents and Assistant Agents, and the essential Part we are interested in as support for this case.

The following Articles of Part I, of the current Agreement are invoked as support of the claim of the Committee:

the said Agreement, which constitutes the applicable Agreement between the parties and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First, subsection (i) confers upon the National Railroad Adjustment Board, the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that under the applicable Agreement the Claimant was properly removed from the agency position at Greenville, designated as an asterisk (*) position in the rate schedule; that such action of the Carrier was not arbitrary or malicious; and that the Claimant is not entitled to restoration in that position nor to the compensation which he claims.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

Exhibits not reproduced.

OPINION OF BOARD: T. R. Callahan, the claimant, entered the Carrier's employ on February 19, 1920, and had continuous service to the date of his removal therefrom as Clerk, Freight House Foreman and Agent. On September 8, 1943, he was appointed as Agent at Greenville, Ohio. Such position at that point is, and on all dates herein involved was, designated in the rate schedule of applicable portions of the current Agreement as an asterisk (*) position.

July 10, 1946, claimant was notified by his immediate supervisory officer that the position of trucker at Greenville station would be abolished and that he was to render assistance to the truck driver in the loading and unloading of L. C. L. freight. On that occasion claimant told the official with whom he had been talking it was impossible for him to do that work and that he was not going to do it. The following day, the Carrier was called by the truck driver who advised that claimant would not assist him in unloading his truck and requested instructions as to what to do. Carrier through its supervisory agent called claimant and instructed him to assist the driver. Claimant refused and told Carrier's agent it was up to him to make the next move. On July 13, 1946, claimant was instructed to attend an investigation on July 17, following, in connection with "Refusing to obey and comply with instructions given by his supervisory official on July 10 and 11, 1946." At this hearing he admitted his conduct had been about as heretofore related and in addition when asked if he was returned as Agent at Greenville he would continue to refuse to render assistance to the truck driver in the handling of freight at the freight depot stated in substance that his position was unchanged. His exact answer to such question reads: "I still make the same statement. It is impossible to help the truck driver load and unload freight without having to sit at my desk until late at night to complete my work. I am not refusing to do anything reasonable". Prior to making such statement and in definitely refusing to assist with the freight work he had said he would not comply with unreasonable instructions. As a result of such investigation and hearing claimant was removed from his position as Agent on August 5, 1946. He now asserts the Carrier's action in that respect was in violation of the Agreement and claims compensation from such date until restored to his former position.

This case hinges upon the construction to be given certain applicable provisions of Part 1 of the current Agreement, between the Carrier and its Agents and Telegraph Department Employees, governing rules, rules of pay

and working conditions of such classes of employees. The particular provisions in question are an exception to the scope rule and the first three sections of Article III of such Agreement.

The exception to the scope rule reads:

"Positions which are designated by an asterisk (*) in the Rate Schedule, applicable to Part I of this Agreement attached to and made a part of this Agreement, shall not be subject to any of the provisions of Article I (Selection of Positions) or Article II (Seniority) of Part I of this Agreement. The manner of designating and filling such positions is set forth in, and is governed solely by, the provisions of Article III (Excepted Positions) of Part I of this Agreement."

The above mentioned sections of Article III, dealing with excepted positions, provide:

"Section 1. With respect to those positions which are designated by an asterisk (*) in the Rate Schedule applicable to Part I of this Agreement, which is attached to and made a part of this Agreement, it is recognized by the parties hereto that the duties of those positions are such that the qualifications necessary to the proper performance of those duties involve considerations beyond those of seniority, ability and fitness as referred to in Article I, Section 1. It is, therefore, agreed between the parties hereto that none of the provisions of Article I or Article II of Part I of this Agreement shall apply to positions designated by an asterisk (*), and no person shall be entitled to acquire any such position by bid or by displacing another employe in the exercise of seniority.

Section 2. In the appointment of employes to, and the removal of employes from, positions designated by an asterisk (*) the Company shall not be restricted in any way by the provisions of Part I of this Agreement.

Section 3. No position now existing or hereafter established shall be designated by an asterisk (*) in the Rate Schedule if the employe filling such position is normally required, during his entire daily tour of duty, in addition to his Agency duties, to perform routine duties usually performed by Clerical, Station or Telegraph Department employes."

No claim is made that the Carrier did not have the right under III (1 & 2), supra, to dismiss claimant from service if on the dates in question he was occupying an asterisk (*) position. That question is definitely settled by the admission made by the Petitioner in its ex parte submission where it makes the following statement:

"The Committee claims that under the Rules of Exception, the Carrier has the right of selection and assignment of asterisk (*) positions, the employe or his representative have no voice in the selection, that thereafter, this employe is at the whim of the carrier's supervisors, that he can be removed without just cause and cannot support a protest; * * *."

Having made the foregoing concession, Petitioner then states in substance that its claim is based upon the proposition that when the Carrier abolished the position of trucker at Greenville and required Callahan to assist the truck driver in handling L. C. L. freight, the Agent's position at Greenville immediately became a one man station and automatically lost its status as an asterisk (*) position with the result Callahan could not properly be removed by the Carrier in the summary and unilateral proceeding to which we have heretofore referred.

As supporting its position and requiring the allowance of its claim, Petitioner points to Article III (3) supra. We do not give such Article the weight Petitioner places upon it. All it does is outline the situations where

positions cannot be designated by an asterisk (*) in the rate schedule. We find nothing in its language, or any other language to be found in the Agreement, or in the arguments advanced by Petitioner, to justify a conclusion that once a position has been so designated it automatically loses its existing status and becomes a non-asterisk position if thereafter its occupant is directed to do routine work of the character described in Section 3 of the Article to which we have just referred. We are dealing with a position which is conceded to have been designated by an asterisk (*) in the rate schedule of the current Agreement and one which has never been removed therefrom by mutual assent of the parties. In that situation the only method of changing its classification is by negotiation.

Since the agency at Greenville was an asterisk (*) position on all duties in question, the Petitioner has wholly failed to establish any sound ground on which to base an affirmative award. Hence the claim must be denied.

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 Petitioner has failed to establish grounds for the granting of an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 12th day of August, 1948.