

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
READING COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Reading Company that:

(a) the carrier violated Article 27 (a) of the Telegraphers' Agreement, when following his displacement at Newtown Junction April 6, 1947, it refused H. A. DeWalt the right to displace the agent, a junior employe, at Wissahickon,

(b) in consequence thereof the carrier shall now permit such displacement and shall pay to Mr. DeWalt the difference between what he would have earned at Wissahickon and what he has earned on other positions plus the provisions of Article 22, of the said Telegraphers' Agreement, and,

(c) in further consequence thereof other employes who have been or may be adversely affected as to earnings and/or the exercise of seniority by the carrier's action in not permitting DeWalt to displace on the Wissahickon agency shall be made whole with respect thereto, plus the provisions of Article 22, of the said Telegraphers' Agreement.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing effective date of April 1, 1946, by and between the parties, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Prior to April 6, 1947, Mr. H. A. DeWalt, seniority date October 24, 1913, was regularly assigned first trick towerman at Newtown Junction. Effective April 6, 1947, he was displaced at Newtown Junction, in the exercise of seniority and in accordance with the provisions of Article 27 (a), of the Telegraphers' Agreement, by F. E. O'Brien, seniority date September 15, 1911, whose position at Eastwicks has been abolished. Mr. DeWalt in turn, in accordance with the provisions of said Article 27 (a), elected to displace J. C. Erwin, seniority date January 6, 1936, who was regularly occupying the station agent position at Wissahickon. The carrier denied this election hence DeWalt exercised seniority, under protest, elsewhere.

POSITION OF EMPLOYEES: As indicated by the Employees' Statement of Facts, H. A. DeWalt was displaced from his regular position at Newtown Junction April 6, 1947, by F. E. O'Brien, whose position at Eastwicks Tower had been abolished. Article 27 (a), of the Telegraphers' Agreement provides that a displaced employe, or an employe whose position is abolished "may displace any junior employe occupying a permanent position on the seniority district". Mr. DeWalt, therefore, with a seniority date of October

Under the facts and circumstances set forth in the foregoing, it is the Carrier's position that by agreement J. C. Erwin had prior rights to the agency position at Wissahickon and could not be displaced therefrom so long as he retained the position and his status was not changed or modified in any way by the agreement of April 1, 1946, therefore, it was proper to deny Mr. DeWalt the right to displace Mr. Erwin at Wissahickon, consequently the claim to permit such displacement at this time and payment for difference in earnings by claimant or other employees is without merit or justification and the Carrier requests the Board to so find and deny the claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The same factual situation prevails in this case as that considered in Award No. 4182. The Agreement, Article 27 (a) and Memorandum Agreement were considered at some length in that award. The Carrier's denial of claimant DeWalt's election is not in accordance with the Findings made in Award No. 4182.

In view of the previous award governing a like situation, the ruling will be that the Carrier violated the Agreement and the claim should be sustained. The ruling is confined to the status of Mr. H. A. DeWalt's claim as set out in divisions (a) and (b) and does not accrue to the benefit of others who might be remotely affected. If any employee can show that his earnings were directly affected by the failure of the Carrier to allow the right to displacement by Mr. DeWalt it will be necessary that such proof be considered before a claim based thereon can be sustained.

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 employee involved in this dispute are respectively carrier and employee 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 be sustained as to divisions (a) and (b) but denied as to (c).

AWARD

Claim sustained as to (a) and (b), denied with reservations as set forth in the Findings on (c).

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of November, 1948.