

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, 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:

1. Prior to April 1, 1936, Operator A. R. Sherwood, was assigned to extra work in "JC" Dispatching Office, Jersey City, N. J., under priority rights provided by Regulation 3-A-2. On April 1, 1936, priority right was arbitrarily denied him, and he was removed from the office. On July 24, 1944, priority rights were restored to Sherwood, and
2. Further claim that Sherwood be allowed the differential between what he earned and what he would have earned in "JC" Jersey City, had he not been deprived of his rights in that office from April 1, 1936.

EMPLOYEES' STATEMENT OF FACTS: On January 9, 1926, in accordance with the provisions of Regulation 3-A-2, A. R. Sherwood regularly assigned Block Operator, who holds seniority roster standing from December 13, 1922, was assigned to extra work in "JC" Dispatching Office, Jersey City, N. J., by bid on an advertised bulletin, continuing in that capacity until April 1, 1936, when his assignment to such work was arbitrarily terminated, and he was removed from the Dispatching Office and reverted to road work.

On Advertised Bulletin No. 390 dated January 6, 1939, request was made for applicants desiring extra work in "JC" Dispatching Office, Jersey City, N. J., and A. R. Sherwood submitted an application for such work but his application was not considered and he was denied work in "JC" Office.

In a letter dated January 25, 1939, addressed to the Division Operator, A. R. Sherwood requested to be advised the reason his application was not considered for such work. The Division Operator, in a letter dated February 3, 1939, advised A. R. Sherwood his application was not considered for the reason that he had been disqualified for failure to perform duties as outlined in a letter dated April 1, 1936.

By virtue of the award made to advertisement bulletin No. 390, of January 6, 1939, for extra work in "JC" Dispatching Office, nine (9) junior employees to A. R. Sherwood were awarded assignments to such extra work.

On September 22, 1941, in view of the satisfactory work on the road performed by the Claimant, he was given another opportunity to qualify for extra work in "JC" Dispatching Office, but subsequently for the same

III. Under the Railway Labor Act, the National Railroad Adjustment Board, Third Division, is required to give effect to the said Agreement and to decide the present dispute in accordance therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to 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 thereto 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 such action.

CONCLUSION

In the light of the foregoing it is respectfully submitted that the settlement offered by the Carrier and accepted by the Claimant was proper and in accordance with the Agreement that was in effect during the period in which the claim was presented and handled, and consequently the Claimant is not entitled to further monetary adjustment.

Therefore, your Honorable Board is respectfully requested to deny the claim in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant became an employe on the New York Division on December 13, 1922. On January 9, 1926, he bid for and was assigned to a position of telegrapher in the "JC" Relay Office, Jersey City, N. J. In this position he attained office seniority which gave him priority over employes having only seniority rights on the division. On April 1, 1936, claimant was removed from the position because he could not qualify as a dispatcher, a position outside the scope of the Telegraphers' Agreement, and thereby serve as relief for dispatchers working in the office. Claimant continued to bid for telegraphers' positions in the "JC" Office and his rights were ignored until March 2, 1942, when he was awarded a "JC" position. He failed to press his right to a "JC" position and appears to have acquiesced in the rulings made by the Carrier. On March 25, 1942, after being awarded a "JC" position on March 2, 1942, he filed a claim demanding that his priority as a "JC" telegrapher be restored to him as of January 9, 1926. On July 24, 1944, the Carrier allowed his claim and restored his priority right as a "JC" telegrapher as of January 9, 1926. On August 5, 1944, claimant filed his claim for wage losses sustained by him from April 1, 1936.

It is the contention of the Carrier that claimant is barred from making money claims not presented within thirty days from the date the claimant received his pay check for the pay period involved. Carrier's position is based on Article V, Section 20 (a), current Agreement, effective May 16, 1943, which in part states:

"Claims for money alleged to be due may be made only by an employe or by his duly accredited representative, in his behalf, and must be presented, in writing, to the Superintendent within thirty (30) days from the date the employe received his pay check for the pay period involved, * * *."

It is the position of the claimant that the claim was pending since April 1, 1936, at which time no cut-off rule existed. It is urged that the quoted

rule, effective May 16, 1943, can have no effect upon any money claim arising prior to that date.

We do not think the Organization occupies a tenable position. The claims existing prior to March 2, 1942, were not money claims. They consisted of assertions of priority rights in the "JC" Office in Jersey City, N. J. This claim was adjusted favorably to the claimant on July 24, 1944. On August 5, 1944, the first claim for wage loss was asserted. Under the rule quoted, Article V, Section 20 (a), current Agreement, claimant was limited to claims presented within thirty days from the date he received his pay check for the pay period involved. It is conceded that if this rule is applicable that claimant has no valid money claim for the reason that he has been on a "JC" position and received "JC" rates of pay during the period in which the rule permits as a claim to be filed.

We point out that Article V, Section 20, current Agreement contains no saving provision and consequently it applies to all money claims filed after its effective date. Claims previously filed are, of course, unaffected by its provisions. We are required to say, therefore, that all money claims made after May 16, 1943, the effective date of the rule, must be made in accordance with the terms of that rule. The parties evidently so construed the rule when they completed a settlement of the claim on that basis on July 6, 1946. It was only when it was discovered that this settlement would produce no money for claimant that the Organization attempted a rescission of the settlement agreement. The holdings already made eliminate the necessity of discussing the right of the Organization to rescind that agreement.

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 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

No basis for an affirmative award exists.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of April, 1949.