

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE NEW YORK CENTRAL RAILROAD
(BUFFALO AND EAST)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Buffalo and East, that:

(a) The Carrier violated the provisions of the Telegraphers' Agreement when and because after advertising the temporary vacancy of first trick telegrapher at "UT" Telegraph Office, Utica, New York, it refused to assign the position to the senior employee who had complied with Article 27 (b) of the Telegraphers' Agreement.

(b) In consequence of such violation, Mr. R. S. Quinn shall now be assigned to the position of Telegrapher temporary 8:00 A.M. to 4:00 P.M., Utica, New York, and shall now be paid under the provisions of Article 13 for each day he has been or may be away from this position.

EMPLOYEES' STATEMENT OF FACTS: An Agreement bearing effective date of July 1, 1948 is in effect between the parties; hereinafter referred to as the Telegraphers' Agreement.

Under date of January 22, 1949, The Carrier issued Bid Circular No. 1 to all concerned on the Mohawk Division in the Telegraphers' class of service advertising among other vacancies, the temporary vacancy at "UT" Telegraph Office, Utica, New York; hours 8:00 A.M. to 4:00 P.M., rest day, Saturday. The notice stated that applications would be received for the vacancy until 12:00 noon, February 2, 1949. It also stated that copy of bids should be sent to Local Chairman of ORT as well as one to the Carrier's Chief Signalman.

The Local Chairman received copy of bid for the position of Telegrapher at "UT" Utica from only one bidder, Mr. R. S. Quinn. The Carrier, in checking the bids received with the Local Chairman, advised that it had a bid from Mr. M. J. Owens, who was the senior of the two applicants. But since Mr. Owens had not complied with the rules, it was agreed to assign the position to R. S. Quinn. However, when the assignment was made by the Carrier, the job was given to M. J. Owens, who had not complied with Article 27 (b) or the requirements as shown in the Bid Circular No. 1 dated January 22, 1949.

The Organization protested the improper assignment of the position. The Carrier denied the claim.

"Neither are we inclined to discuss, since it is not here, the merits of the controversial issue discussed in Awards 902, 903, and 1136 of this Division, on which Claimant relies as supporting the last stated contention. It suffices to say that an examination of those Awards reveals an entirely different question was involved and that what is there held does not lend support to her position.

"We think under the facts of this case there are sound reasons for rejecting Claimant's position Rule 11 was violated in the respect mentioned and that therefore she is entitled to the compensation of the position. Those reasons will be stated as briefly as possible and are, (1) if the Agreement was violated in the particular mentioned, it was the employee's violation, not the Carrier's. (2) The clause of the rule in question is directory, not mandatory, so far as the Carrier is concerned and no penalty is imposed for its violation. (3) Under the holding of this Award, the question raised is moot as to Claimant and need not be determined."

It will be noted the Board's opinion contains no justification for the contention of the Organization as set forth in last paragraph of the General Chairman's letter of March 26, 1949 (quoted in principal point 2) which reads as follows:

"It is the contention of the Organization that the rule makes it mandatory that each applicant for a vacancy under the Telegraphers' Agreement must file a copy of the bid with the Local Chairman. Claims will be made accordingly."

CONCLUSION

The evidence herein presented conclusively shows that alleged non-receipt of copy of application by the Local Chairman did not invalidate M. J. Owens' application for position of Telegrapher in "UT" office at Utica, and that, as the senior qualified applicant, he was entitled to the position in accordance with the provisions of Article 27 (e).

(Exhibits not reproduced.)

OPINION OF BOARD: On January 22, 1949, the Carrier bulletined a temporary vacancy at "UT" Telegraph Office, Utica, New York. The notice stated that applications would be received for the vacancy until 12:00 noon, February 2, 1949. The Carrier received bids from M. J. Owens and R. S. Quinn, the former being the senior employee of the two. Both employees are conceded to be qualified for the position. Owens failed, however, to send a copy of his application to the Local Chairman prior to February 2, 1949. The Carrier assigned Owens to the position and the Organization contends that this was a violation of Article 27 (b), current agreement, which states in part:

"(b) Employees desiring advertised positions must file application with the office issuing the notice, copy to Local Chairman, by 12 o'clock noon on the tenth calendar day following the date of notice . . ."

The Organization contends that the filing of a copy of the application with the Local Chairman is mandatory and that a failure to so file it invalidates the application for all purposes. The Carrier contends that the provision "copy to Local Chairman" is directory only and that the Carrier was required to recognize the rights of the senior applicant even though he sent a copy of the application to the Local Chairman one day late.

The applicable portion of Article 27 (b) clearly means that an applicant for an advertised position must file his application with the Carrier and send a copy of it to the Local Chairman within the time fixed by the notice. A failure to comply with either provision nullifies the application and leaves the applicant in the same position as if he had filed no application at all. Awards 902, 903, 1136, 1205. We reaffirm the principle announced in those awards.

Owens having failed to comply with the conditions precedent contained in Article 27 (b), his bid could not be considered by the Carrier. Consequently, Owens could gain no rights by virtue of his ineffective bid. An affirmative award is in order for the wage loss suffered.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Agreement was violated.

AWARD

Claim sustained per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of June, 1950.