

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE LONG ISLAND RAILROAD COMPANY
(David E. Smucker and Hunter L. Delatour, Trustees)**

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

(a) The Carrier violated the provisions of the Telegraphers' Agreement when and because it required or permitted R. L. Johnson to displace C. G. Embert, a senior employe, from the Long Beach Agency position on or about November 1, 1949;

(b) The Carrier's above-described act caused other improper displacements, e.g., the displacement of L. A. Platt from the agency at Greenport by C. G. Embert; the displacement of T. C. Schultz from the agency at Yaphank by L. A. Platt; and

(c) C. G. Embert, L. A. Platt, T. C. Schultz and others improperly displaced shall be returned to their former positions and paid under the provisions of Article IV (N-1) for the period of time they have been, or may be, denied the right to occupy their regular positions.

EMPLOYES' STATEMENT OF FACTS: An Agreement by and between the parties, bearing effective date of June 1, 1945, and referred to herein as the Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Effective April 16, 1941, R. L. Johnson, seniority date February 19, 1936, was awarded the Long Beach agency under the then existing rules of the Telegraphers' Agreement. On October, 1943, he was promoted to the position of Supervisor of Loss and Damage Bureau, Long Island Railroad, a position not covered by the Telegraphers' Agreement, and from this position he was transferred to the Supervising Agent's position, Wilkes-Barre District, Pennsylvania Railroad Company, effective January 16, 1945. On November 1, 1947, he was transferred by the Pennsylvania Railroad Company to a similar position on the Williamsport District. These supervising agency positions are not covered by Telegraphers' Agreements.

January 19, 1945 Carrier's Bulletin No. 74 advertised for applicants for a permanent vacancy in the Long Beach Agency. Carrier's Notice of February 5, 1945, announced that C. G. Embert was permanently assigned to said Long Beach Agency in answer to said Bulletin No. 74. It is immaterial here who occupied the Long Beach Agency between October 1, 1943 and February 5, 1945.

In view of the foregoing and since we have shown there is no provision of the applicable Schedule Agreement or the interpretations thereof which precluded the Carrier from removing Mr. Embert as Agent at Long Beach and appointing Mr. Johnson to the vacancy thus created, this claim should be dismissed.

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.

(Exhibits not reproduced.)

OPINION OF BOARD: On April 16, 1941, R. L. Johnson, seniority date February 19, 1936, was awarded the agency at Long Beach, New York. On October 1, 1943, he was promoted to the position of Supervisor of Loss and Damage, a position outside the Telegraphers' Agreement. Until November 1, 1949, he held positions with the Long Island and Pennsylvania railroads which were not covered by the Telegraphers' Agreement. On November 1, 1949, he was obliged to return to the Long Island and was given his old position as agent at Long Beach, then held by C. G. Embert, seniority date of November 7, 1927.

The record shows that on January 19, 1945, the Long Island Railroad Company bulletined the position of agent at Long Beach and on February 5, 1945, it was awarded to Embert. The position was held by Embert until Johnson returned and displaced him on November 1, 1949. The Organization contends that Johnson could properly displace a junior employe but that it was a violation of the Agreement to permit him to displace an employe holding seniority over him.

It is not disputed that permanent vacancies in positions designated by an asterisk in the rate schedule may be filled by appointment from the seniority roster without regard to seniority. Article II-G, Current Agreement. The record establishes the fact that the position of Agent at Long Beach was bulletined as a permanent vacancy at the time Embert bid it in. It is the position of the Carrier, however, that the right to appoint to a position without regard to seniority carries with it the right to fill such positions with a new employe at any time it sees fit. The Carrier cites Awards 1279 and 4088 in support of its position.

We point out that the rule applicable in Award 1279 stated that "in filling such positions (asterisk positions)" seniority will not apply. In the rule before us it is stated that the company "may fill such vacancies (permanent vacancies) from the seniority roster without regard to seniority." The Agreement therefore limits the right of the Carrier to appoint to asterisk positions, without regard to seniority, to permanent vacancies in such positions. This is in strict compliance with the language used in Award 1279 wherein it is said:

"The Board does not agree with the employes' construction of the 'Exception'. If that is what was meant, it should have included such an expression, as for example—'when such vacancy occurs.' There is no such expression or a similar expression used. The words—'filling such positions'—do not convey the thought of filling such positions only when a vacancy occurs."

We submit that Article II-G, Current Agreement, supplies the expression which was pointed out as necessary in Award 1279 to sustain the claim. In Award 4088, the rule involved specifically provided that "in the appointment of employes to, and the removal of employes from" asterisk positions the Carrier was in no way restricted by Part I of the Agreement.

We necessarily conclude that Carrier could properly appoint an employe on the seniority roster to the Agent's position at Long Beach without regard to seniority only in the event of a permanent vacancy in that position. The right of Johnson to displace is limited to junior employes holding non-asterisk positions.

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 Employes involved in this dispute are respectively carrier and employes 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 (a) sustained. Claim (b) sustained. Claim (c) sustained to the extent that claimants be compensated under the provisions of Article IV (N-1) until the violation of the Agreement is corrected.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 22nd day of September, 1950.