

Award No. 5231

Docket No. TE-5321

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Kansas City Southern Railway, that

1. The Carrier violated the terms of the prevailing Agreement between the parties when on August 15, 1949, it abolished the exclusive agency position at Watts, Oklahoma, a position not subject to any rules of the Agreement except Rule 1-2, and further, within thirty days thereafter, permitted the incumbent agent, A. E. Gilreath to displace F. T. Green, off the non-telegraph agency position at Sugar Creek, Missouri, a position covered by all rules of the Agreement.

2. All employees subsequently displaced or adversely affected as a result of the Carrier's improper action shall be returned to their former positions and compensated for all monetary losses sustained.

EMPLOYES' STATEMENT OF FACTS: At Watts, Oklahoma, prior to August 15, 1949, the Carrier maintained a position of exclusive agent, as provided for in second paragraph of Rule 1-2 of the prevailing agreement, reading:

"Vacancies in agencies at Neosho, Watts, Heavener, DeQueen and Leesville will be bulletined under provisions of Section 4-2. Telegraphers assigned to these positions will retain their seniority, but the position of agent at these stations will not be subject to any of the other provisions of these rules and working conditions."

Effective August 15, 1949, Carrier declared abolished the position of exclusive agent at Watts, Oklahoma; a position of agent-telegrapher having been substituted therefor, which agent-telegrapher position was bid in by and assigned to the first trick telegrapher-clerk, J. R. Cobb at Watts.

Notwithstanding the fact that the position of agent at Watts and the incumbent thereof were excepted from all rules of the agreement, other than as specifically provided for in Article 1-2, quoted above, the Carrier arbitrarily, over the written protest of the General Chairman, permitted Agent Gilreath (occupant of the Watts agency position at the time it was abolished) to exercise full displacement rights. He was permitted to displace the agent at Sugar Creek, Missouri, whose position is covered by Rule 1-1 and listed in the wage scale, Rule 7-20, at page 18 of the prevailing Telegraphers' Agreement, and subject to all of the rules of said agreement.

as Watts was prior to the date of change—August 15, 1949) which brought about the controversy (see old Rule 61). None of the rules applied to Spiro except the bulletin rule and after assignment the employee assigned could not be displaced by exercise of seniority rights. Mr. Bewley held seniority rights at that time and had I been handling the matter I believe it would have been my position, the same as it is now, that he could have displaced any junior telegrapher on any job covered by the schedule. I cannot say why that was not done, except that those who did handle the matter acceded to the request of the General Chairman, which, according to the file, I assume was entirely satisfactory to Mr. Bewley. I cannot so agree in this case, as I do not consider that it would be proper."

Copy of original correspondence exchanged in Bewley case is attached as Exhibit "B".

The Agency at Spiro (Bewley case) was an excepted position. The Agency at Sugar Creek (case here at issue) is not excepted in any manner. There is much difference between bumping in on a position excepted from bumping rights and bumping in on a fully covered schedule job. If the conditions had been reversed and Mr. Gilreath had been working at Sugar Creek and had attempted to bump in on the excepted agency at Watts, we would have agreed with General Chairman that he had no such right; however, we hold that the fact that Gilreath came off an excepted position does not bar him from exercising seniority and displacement rights to a fully covered schedule position.

Claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: One A. E. Gilreath held a position as exclusive agent at Watts, Oklahoma. Under Rule 1-2 of the applicable Agreement the position of Agent at Watts was not subject to any rule of the Agreement except the bulletin rules, however, under the same rule telegraphers assigned to this position retained their seniority. Although Mr. Gilreath held no seniority as a telegrapher at the time of his appointment to this position, by agreement between Carrier and employees he was given a seniority date. The Watts Agency was abolished and Mr. Gilreath was permitted to displace a junior employee at Sugar Creek, a position which is fully covered by all the provisions of the Agreement. Employees filed claim asserting that it was a violation of the Agreement to permit Mr. Gilreath to make this displacement.

The contention of the employees is best expressed by the following language taken from POSITION OF EMPLOYEES in their submission: "The Organization maintains that the Carrier violated the terms of the Agreement when it permitted Gilreath who was subject to no rules, except as specifically provided in Article 1-2, to displace the Agent at Sugar Creek, Missouri, whose position was covered by and subject to all the rules of the said Agreement."

The fallacy of the Employees' contention is apparent when that statement is compared to the rule involved. Under Rule 1-2 Mr. Gilreath retained his seniority despite the fact that the position of exclusive Agent at Watts during its existence was excepted from all rules of the Agreement except the bulletining rules. A great many of the Rules of the Collective Bargaining Agreement gravitate around positions and the incumbent of a position enjoys certain privileges and carries certain obligations by reason of his occupancy thereof. Seniority, however, does not attach itself to a position but rather to a person. Hence, the Employees' error is in failing to distinguish between the incidents attaching to a position and those attaching to a person. Clearly, seniority is a personal right. It is practically universally recognized as a valuable property right by the courts. It is the keystone upon which many rights of individuals under Collective Bargaining Agree-

ments are based. One of these rights is found in Rule 5-2 of this Agreement providing for displacement. It is not questioned that Mr. Gilreath complied with the conditions precedent to exercising the displacement rights which accrued to him because of the seniority he acquired by virtue of the Organization's Agreement with the Carrier. Under the circumstances, it is clear that Carrier complied with the provisions of the Agreement in permitting the displacement.

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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon,
Acting Secretary.

Dated at Chicago, Illinois, this 26th day of February, 1951.