Award No. 5378
Docket No. TE-5366

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Glenn Donaldson, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD CO.

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna and Western Railroad that:

(1) The Carrier violated the provisions of the Telegraphers' Agreement when and because on April 20, 1948, it refused to advertise the third trick telegrapher position at Scranton Yard Office as a permanent vacancy following the promotion of A. R. Carpenter to train dispatcher work; and

(2) in consequence of said violation the Carrier shall now consider P. J. Gillespie, who was assigned to the third trick position at Scranton Yard by bulletin S-13, June 21, 1949, as having been assigned to said position June 21, 1948; and be paid under the provisions of Article 15 of the Telegraphers' Agreement, July 20, 1948 through June 20, 1949.

EMPLOYES' STATEMENT OF FACTS: A. R. Carpenter held regular assignment as operator, third trick, Scranton, Pennsylvania Yard Office. He also held seniority as a train dispatcher.

On April 20, 1948, Carpenter accepted promotion to train dispatcher's service pursuant to Article 16 (d-1) of the Telegraphers' Agreement. The Organization immediately lodged a claim requesting that the third trick operator's position at Scranton Yard, resulting from Carpenter's promotion be declared vacant and advertised for permanent assignment pursuant to the intent and purpose of Article 16 (c-1) and 16 (c-2); and as a result of failure to so advertise said vacancy, the employe who is entitled to the position, and who is to be assigned when the vacancy is properly advertised, shall be paid under the provisions of Articles 15 and 24 for each day until placed on the assignment.

The Carrier did not advertise the vacancy until June 8, 1949, which resulted in P. J. Gillespie being assigned to it on June 21, 1949; payment of the claim was not allowed.

POSITION OF EMPLOYES: An agreement by and between the parties, bearing effective date of November 1, 1947, and referred to herein as the Telegraphers' Agreement, is in evidence; copies thereof are on file with your Board.

This Carrier contends that your Board should hold in this case as it did in Award No. 2436—"that the specified practices are not superseded by subsequent agreements and that they remain in force until such time as they may be eliminated by negotiation, a field entirely foreign to the powers of this Board."

The Carrier contends there is no rule in the agreement with Telegraphers that would support the Employes in any such claim as is made here.

The claim is without merit, is not supported by either rule or practice, and it should be denied. On the contrary, the practice under the present rules and the corresponding rules of past agreements is to encourage promotions and the qualifying for promotion. Where the personal whim of the General Chairman seeks to set at naught these salutary benefits to employes by a contention obviously alien to the best interests of the men covered by the agreement, this Board, we submit, will not be a party to such a scheme.

The Railway Labor Act imposes upon the general chairman the duty of representing the employes "without hostile discrimination, fairly, impartially and in good faith". **(Steele v. L. & N. R. R., 323 U. S. at 204).** To deny them the full benefits of promotion or the opportunity to qualify for promotion by a punitive loss of their positions, **which is the result which would flow from sustaining the whim of the general chairman in this case,** is neither just nor required by the agreement.

The principle in this case is similar to that in Docket No. TE-5316 now before this Division.

OPINION OF BOARD: Mr. Carpenter did not hold a permanent position as dispatcher during the period in question. He was not "promoted" to such a position within the meaning of Article 16 while working as an extra dispatcher for reasons stated in our Opinion in Award No. 5377. If time restrictions on such interchange practices are called for, it is for the parties to arrive at the terms thereof through collective bargaining.

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 we find that there has been no violation of the Agreement between the parties in respect to the matters complained of herein.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon,
Acting Secretary

Dated at Chicago, Illinois, this 28th day of June, 1951.