

Award No. 6178

Docket No. TE-6015

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on St. Louis Southwestern Railway Lines:

(a) That the Carrier violated the terms of the Agreement between the parties when and because it refused to assign O. E. Hulehan, the senior competent applicant, to the position of agent-telegrapher at New Madrid, Missouri, advertised for bids May 14, 1951, and instead assigned an applicant junior in point of service to the position; and

(b) That O. E. Hulehan shall now be assigned to the position of agent-telegrapher at New Madrid, as required by Article 13-1 of the Agreement, and be compensated the difference between what he has earned subsequent to the date the violation occurred and what he would have earned had he been promptly and properly assigned to the position.

EMPLOYES' STATEMENT OF FACTS: There is an agreement as to rules of working conditions and rates of pay, bearing date of December 1, 1934, in effect between the parties. Several rules have been modified and rates of pay have been increased subsequent to the date of the agreement.

A vacancy occurred in the agent-telegrapher position at New Madrid, Missouri, and Superintendent J. L. Humphreys, by bulletin, Advertisement No. 13, dated at Pine Bluff, Arkansas, May 14, 1951, advertised the vacancy for bids:

"Bids will be received in writing in this office for a period of ten (10) days from date, or until 5:00 P. M., May 24, 1951, on the following positions:

1. Agent-Telegrapher, New Madrid, Missouri, hours 8:00 A. M. to 5:00 P. M. with one hour off for lunch, Monday through Friday,

Carrier's detriment, as is plainly evident from the complaints cited. If the local officers had shown any disposition to be unreasonable or arbitrary in the matter of Mr. Hulehan's qualifications, there can be no doubt that he would have been disqualified on some of the positions he has been permitted to work. The many sources of the complaints against him rule out any possibility of bias or prejudice.

The facts are clear that he did not have the necessary ability and qualifications for the position claimed. Consequently the claim is not supported by the rules, and the Carrier respectfully requests that it be denied.

All data herein has been presented to representatives of the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim herein presented states that the Carrier violated Article 13-1 of the effective Agreement when it did not assign O. E. Hulehan, the senior applicant, to a vacancy in the position of agent-telegrapher at New Madrid, Missouri, resulting in loss of earnings to which the claimant was entitled by virtue of seniority and ability. Reimbursement in an amount equal to the loss of earnings is claimed.

The essential facts of this claim are agreed to by the parties. The only question is whether or not the claimant was competent to fill the vacancy.

Article 13-1 reads as follows, in part:

"Except as per Article 13-2 permanent vacancies and permanent additional positions shall be bulletined to all employes on the division; bulletin to show location, position, hours of service and rate of pay and the senior employes covered by this agreement making written application within ten (10) days from date of bulletin, if **competent**, shall be assigned. * * *" (Emphasis ours)

Article 18-1 reads as follows:

"Employes will be in line of promotion and where ability and qualifications are sufficient in the opinion of the Management, seniority will prevail."

The Employees claim that Hulehan has performed the duties of agent-telegrapher at several points over a period of years; that he had performed the duties of agent-telegrapher at New Madrid one day each week for a period of time; that if he were not competent the Carrier would not have permitted the claimant to act as agent-telegrapher at this station. The Employees state that, by a long line of awards, this Board has established the principle that where the senior applicant has **sufficient** ability he must be assigned even if the junior applicant clearly has **more** ability; and that this principle is applicable to this case.

The Carrier states that many complaints have been received concerning the work of this claimant by fellow employes and patrons and that he was not competent for the full time position of agent-telegrapher at New Madrid.

After a careful reading of the docket and the rules applicable, we find that under Article 13-1 the Carrier has the right to decide whether the applicant is competent to fill the bulletined position and, unless the Employees can prove that the applicant was **competent** to perform the position involved or that the Carrier acted in a biased or prejudicial manner in evaluating the claimant's competency, the decision of the Carrier must be final. The Employees have failed in their proof of competency or prejudice, therefore the claim must be denied—Awards 4040, 5966, 6054.

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 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 there has been no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of April, 1953.