

Award No. 6795

Docket No. TE-6355

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
ATLANTIC COAST LINE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that;

1. The Carrier violated the terms of the Agreement between the parties when it assigned F. E. Todd, an employe whose name is shown on the seniority roster but who was under promotion to an official position wholly excepted from the agreement, to the bulletined vacancy on the supervisory agency position at Cordele, Georgia, a position subject to all the rules of the agreement.

2. The senior qualified applicant shall now be awarded the position of supervisory agent at Cordele, Georgia, and compensated in accordance with the provisions of Article 8 for each day he has been denied his rights to fill said position.

3. All other employes adversely affected by this violative action shall be compensated for all monetary losses sustained.

Note: The individuals entitled to be compensated as a result of the violation shall in each instance be determined by a joint check of Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: An Agreement by and between the parties bearing effective date of November 1, 1939, and referred to herein as the Telegraphers' Agreement, is in evidence.

The Carrier maintains at Cordele, Georgia, a position of Supervisory Agent, rate of pay \$1.98 per hour. The position is covered by the Agreement. A vacancy on this position occurred and was bulletined on July 13, 1950, bids to close July 23, 1950. There were seven or more applicants, or bids received from applicants, who were employes fully covered by the seniority rules of the agreement. In addition a bid was presented by one F. E. Todd who was holding an official position of commercial

circuits for the transmission of telegrams, reports and similar communications in view of the fact that telegraph circuits are available and have proved entirely satisfactory for many years.

The Atlantic Coast Line Railroad Company has arranged to withdraw from Union Station at Cordele effective September 18, 1952 and thereafter will cease using the facilities or participating in the expense of operating that station. Of course, when that arrangement becomes effective the employees of the Station Company will no longer handle telegraphic traffic for account of this carrier. Effective on and after the date mentioned, the telegraph office located in the freight station at Cordele will be the only facility in that city where telegraphic traffic for the Atlantic Coast Line will be handled.

It is the carriers position that all of the provisions of the current agreement were fully complied with in connection with the assignment of Mr. Todd to the position at Cordele. Therefore, the claim of the employees is without merit and the board is respectfully requested to enter a denial award.

The respondent carrier reserves the right, if and when it is furnished with ex parte petition filed by the petitioner in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered in this, its initial answer.

Data in support of the Carrier's position have been presented to the Employees' representative. (Exhibits not reproduced.)

OPINION OF BOARD: A vacancy arose in the position of Supervisory Agent at Cordele, Georgia, due to the death of the incumbent. That vacancy was properly advertised by bids under date of July 13, 1950, with closing date of July 23, 1950. The job was awarded to one F. E. Todd, who reported for duty thereon August 11, 1950. Mr. Todd had been employed in an official position which Carrier contends he had vacated prior to submitting his bid for the Cordele job.

The record here is replete with matter extraneous to the main and sole issue which is simply whether or not Mr. Todd was eligible to bid upon the Cordele vacancy. The resolution of the issue requires a determination of whether or not there was compliance with Article 15 (b) of the Agreement which reads as follows:

"After vacating positions specified in paragraph (a) to return to service covered by this agreement, seniority can be exercised only by bidding on vacancies or going on the extra list, except that an employe covered by this agreement may accept temporary dispatching for a period not to exceed six (6) months without impairing his seniority, and will retain rights to the position he vacates."

The record reveals that under date of July 20, 1950, Mr. Todd by letter advised his superior that he had definitely decided to submit his bid for the Cordele vacancy which was to be done by Western Union on the 21st and in that letter Todd further requested that he (the superior officer) accept it as his resignation. On July 21 he telegraphed his bid for the Cordele vacancy to the Chief Dispatcher saving that he tendered his resignation as Freight Service Agent to Mr. O. J. English and further that he would appreciate not being called for extra board duty until he had cleared his personal affairs. From the legend appearing on a copy of that telegram, a mail copy thereof was sent to the Local Chairman. The letter of July 20, 1950 shows that Mr. Todd for reasons personal to himself desired to resign his official position and that it was written in confirmation of a conversation held the previous day between him and his superior. While some of the language used by Mr. Todd in expressing appreciation for treatment received in the Traffic Department might impliedly indicate some equivocation in the resignation the whole tenor of the

letter considered in conjunction with the language used in submitting his bid leads to the conclusion that the resignation was final.

It is apparent that the primary aim and purpose of Article 15 (b) is to protect employes holding positions under the Agreement from displacement by others holding official positions and accumulating seniority thereon. Thus only by bidding on vacancies or going on the extra list can one formerly holding an official position return to work on service covered by the Agreement, except for an employe accepting temporary dispatching for not more than 6 months. The Employes have argued that merely resigning from an official position is not sufficient to become eligible to bid because the rule reads "after vacating . . ." In effect, they assert that an actual physical move from the position is required. We cannot agree with that contention. Resigning a position is to give it up or surrender it thus leaving it vacant as far as the one resigning is concerned. If it had been intended that there must be a hiatus between employment on the official position and the submission of the bid it is reasonably conceivable that the rule would have required reverting to the extra board as the only way to return to service under the Agreement.

Intermediate the time of submission of his bid and actually taking up the position of agent at Cordele it appears that Mr. Todd was on a short leave of absence and rendered some assistance to the Traffic Department in the solicitation of tobacco traffic for shipment via Atlantic Coast Line. It is contended by the employer that this is an indication that he was still filling his official position after his bid was submitted. The rule cannot be so narrowly construed as to prevent an employe who resigns an official position from lending some temporary assistance in the work thereof after his resignation and prior to assuming the duties of the covered position under the Agreement.

We conclude that Mr. Todd was eligible to bid on the Cordele vacancy and therefore that the claim should be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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 Carrier did not violate 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 27th day of October, 1954.