

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE DENVER UNION TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the The Denver Union Terminal Railway Company that:

(a) Carrier violated the terms of the agreement between the parties, particularly Rule 19 (B), when on October 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 28, 31; and November 4, 7, 11, 14, 18, and 21, 1954, it failed and refused to consider Towermen (Levermen) F. A. Ochs and A. H. Scott for promotion to yardmaster work.

(b) 1. Carrier shall compensate Towerman F. A. Ochs for October 10, 1954, in the amount of the difference between yardmaster's rate (\$19.98 per day) and what was paid him at Towerman's rate (\$15.78 per day). Further, Carrier shall pay to F. A. Ochs an amount equivalent to eight (8) hours at time and one-half of the yardmaster's rate because idle (on rest day) and not used to fill the position of yardmaster on October 7, 1954, in preference to an outsider.

2. The Carrier shall compensate Towerman A. H. Scott for October 4, 8, 9, 11, 14, 15, 16, 17, 18, 21, 28, 31; November 4, 7, 11, 14, 18 and 21, 1954, an amount representing the differences between yardmaster's rate (\$19.98 per day) and what was paid him at the Towerman's rate (15.78 per day). Further Carrier shall pay to A. H. Scott an amount equivalent to eight (8) hours at the time and one-half rate of the yardmaster's rate, on each day, October 5, 6, 12, 13, 19, and 20, 1954, because idle (on rest days) and not used to fill the yardmaster position in preference to an outsider.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement effective October 1, 1945, as amended on September 1, 1949, and subsequently is in effect between the parties to this dispute.

declined since the foregoing record conclusively shows the claim to be entirely lacking in support under the applicable rules of the governing agreement.

The substance of all matters in this submission has been the subject of correspondence and/or conference between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim is based upon Rule 19 (B) of an Agreement between the parties hereto, effective October 1, 1945, as amended, which reads as follows:

"(B) Towermen will be given consideration for promotion to yardmaster work and will be regarded as in line to such promotion dependent upon the faithful performance of their duties and fitness for increased responsibility."

The facts of record are:

Prior to November 23, 1951, extra yardmaster work was performed by Towermen A. H. Scott and Perry Southwell, both of whom held seniority as telegrapher and yardmaster. The aforesaid employees tendered their resignations as yardmasters on November 23, 1951. This placed Respondent in the position of needing extra yardmasters. Therefore, on November 26, 1951, Respondent canvassed all Towermen by bulletin to ascertain if they wished to be given consideration for positions of relief yardmaster in accordance with Rule 19 (B).

The only application received was from the junior towerman, K. A. Deems, and as Deems' only experience was nine months as relief towerman his application was rejected. As a relief yardmaster was still needed and as no qualified telegraphers submitted applications for such position, Respondent hired R. R. Parry, who established seniority as yardmaster on April 20, 1952. After establishing seniority, Parry was used to protect yardmaster's work.

On July 7, 1954, J. L. Kennedy was hired as yardmaster.

On July 8, 1954, A. H. Scott, who had previously been a relief yardmaster, and who had resigned on November 23, 1951, wrote the Petitioner's General Chairman and expressed a desire for yardmaster work.

On July 10, 1954, F. A. Ochs wrote the Petitioner's General Chairman and stated his desire to be considered for yardmaster's work.

On July 13, 1954, the Petitioner's General Chairman wrote Respondent's Manager and stated that if the Carrier had someone from the extra board available to fill their position, that either Towerman Ochs, Southwell or Scott should have been used to fill the yardmaster's temporary vacancy that had recently occurred. Respondent's Manager replied on July 14, 1954, stating that an extra leverman was not available to fill the vacancy which would have occurred had Ochs, Southwell or Scott been used to fill the temporary vacancy as yardmaster.

The General Chairman on July 19, 1954, wrote Ochs, Southwell and Scott and stated in part:

"Under the circumstances you can see he contends that he did not have anyone available for relief work and that is his excuse for not turning the work over to the towermen.

"Please keep me posted and we may be able to do something next time when the chance comes."

On October 4, 5, 6, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19, 20, 28, 31, and November 4, 7, 11, 14, 18 and 21, 1954, Mr. R. R. Parry was used as yardmaster. On October 7, 10, 17 and 21, 1954, J. L. Kennedy was used as yardmaster.

Claim is based upon yardmaster's work on these dates.

Under these facts and the language of Rule 19 (B) of the effective Agreement relied on by the Claimants, the claim is without merit and must 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 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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of July, 1958.