Award No. 10242

Docket No. TE-9361

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Walter L. Gray, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NEW YORK CENTRAL RAILROAD COMPANY, NORTHERN DISTRICT, (Formerly Michigan Central Railroad)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Michigan Central Railroad that:

1. Carrier violated the agreement between the parties when it required and permitted an employe not under the agreement to perform vacation relief work on the agent's position at Vassar, Michigan, November 7 through November 25, 1955.

2. Carrier now be required to compensate employes under the agreement in the amount of one day's pay for each day of the violation: J. C. Couch on November 7, 14 and 21, 1955; R. T. Fragner on November 9, 10, 16, 17 and 23, 1955; R. Ziegler on November 11, 18 and 25, 1955; and the senior employe idle on rest day (to be determined by a check of the Carrier's records), on November 8, 15 and 22, 1955.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties to this dispute are available to your Board and by this reference are made a part hereof.

The position of Agent at Vassar, Michigan is under the scope of the Telegraphers' Agreement and is listed in the Wage Scale under Michigan Division, Bay City Branch with an hourly rate. The work week of this position is Monday through Friday, with assigned rest days Saturdays and Sundays not relieved.

The regularly assigned incumbent of this position was eligible for fifteen working days (three weeks) vacation during the calendar year 1955 and his vacation period was assigned to start on November 7, 1955. Instead of relieving him with another employe under the Telegraphers' Agreement or deferring his vacation, the Carrier elected to, and did, relieve him during the vacation period with an employe not covered by the Agreement — a clerk who was also employed at Vassar.

4. THE CLAIMS ARE NOT SUPPORTED BY SCHEDULE RULE NOR BY THE AWARDS CITED IN SUPPORT THEREOF BY THE COMMITTEE.

In progressing these claims with the Carrier the Employes did not, in the circumstances in this case, cite any rule of their Agreement which would support them. While they did refer to and cite the last sentence of Sub Section (b) of Article 12 of the National Vacation Agreement, reading:

"When the position of a vacationing employe is to be filled and regular relief employe is not utilized efforts will be made to observe the principles of seniority."

with which this Carrier has no quarrel, the fact remains that that rule, in the circumstances in the instant case where the named claimants were not qualified to work the Agent's position at Vassar, has no application. That rule can only apply to the senior employe having the necessary qualifications who is available to work the vacation vacancy involved.

Awards No. 5917 and 5657 cited by the Employes in support of the instant claims do not involve the issue presented in the instant case where claimants were not qualified to perform the work in question and therefore they have no application here.

In conclusion the Carrier has shown that the Committee in presenting and progressing claims for unnamed claimants have not met the requirements of the governing Time Limit Rule, that the named claimants Fragner, Ziegler and Couch were not qualified to fill the Agent's position at Vassar, that no qualified employe coming under the Telegraphers' Agreement was available to work that position, and, that the employes have cited no rule of their Agreement which will support these claims. Accordingly they are without merit and must be denied.

All facts and arguments contained herein have been presented to the Employes by correspondence or orally in the handling of this case on the property.

OPINION OF BOARD: This dispute has arisen between The Order of Railroad Telegraphers and the Michigan Central Railroad Company (The New York Central Railroad Company, Lessee). It is the contention of the telegraphers that the Agreement existing by and between the parties was violated when the Carrier used a clerk at Vassar, Michigan, to perform the services of agent during the period of November 5, 1955, and including November 25, 1955. The Complainants also ask for damage if there is found to be a violation of the Agreement.

The parties to this dispute have stipulated as follows:

(1) That the position of Agent, Vassar, Michigan, is included in Rule 1 (Scope) (Agents specified in Wage Table) at Page 28 of the Wage Table.

(2) That such position was at all times relevant hereto covered by and subject to each and every provision of the Agreement concerning rates of pay, rules, and working conditions.

(3) That in the exercise of seniority rights provided for in the Agreement, Mr. Deedrick became the regularly assigned Agent at Vassar.

(4) That in accordance with the provisions of Article 4 (December 17,

1941 Agreement (Page 4) as interpreted July 20, 1942, (Page 15) and November 12, 1942, (Page 47 to 62), and August 21, 1954 Agreement, Article 1 (c), Mr. Deedrick was assigned fifteen work days as vacation to begin November 7, and end November 25, 1955.

(5) That dates of vacation were:
November 7, 8, 9, 10, 11
November 14, 15, 16, 17, 18
November 21, 22, 23, 24, 25

(6) That the position of Agent, Vassar, is assigned to work eight hours each assigned work day (Rule 2); 8:00 A. M. to 5:00 P. M. (Rule 8) with one hour for meal period (Rule 7 a); Monday through Friday with assigned rest days of Saturday and Sunday (Rule 10 b of the 40-Hour Week Agreement).

(7) That Mr. Deedrick was absent on vacation each and every day of the days and dates shown in Paragraph 5.

(8) That on all of said dates except November 24, 1955, a recognized holiday (Rule 11), the Carrier designated and required a clerk named Johnson to perform each and every of the duties, functions, and services required of the occupant of the position Agent at Vassar.

(9) That Mr. Johnson is a regularly assigned employe of the Carrier in another craft or class and does not hold seniority rights under Telegrapher Agreements. (Rule 24).

Inasmuch as these parties have agreed on the above nine points and those Articles of Stipulation are not in question then clearly it becomes a part of the record and is not necessary to discuss in this Opinion.

However, we must be concerned with whether or not the Claimants were really qualified under the Vacation Agreement of December, 1941, and the Agreement and Memorandum of April 21, 1954 and subsequent amendments. These Agreements have been studied at length.

We are particularly impressed with Rule 21 (b) which reads:

> "Extra employes will be called for service in the order of seniority provided they are available under hours of service law **and are properly qualified.**" (Emphasis ours.)

Also Rule 26 which reads:

> "Employes will be in line for promotion and when fitness and ability is sufficient, seniority will prevail, Superintendent to be judge as to qualifications."

We are very much impressed with the fact that the record does not disclose that any of these Claimants were qualified under such to work the Agent's position at Vassar, but we are more impressed with the fact that they must have known such a vacancy existed and apparently were not interested in the vacancy because it was a point 119 miles from Monroe, Michigan, and 100 miles from Trenton, Michigan, at which points they held regular assignments. Had this situation not existed these men would have been qualified.

Another important fact is that the Employes who submitted the claims did so on days which were rest days from their regular assignments but they

failed to present any claims about the scheduled violation until the vacancy had terminated and then they presented their claims.

We are clearly of the opinion that these Employes certainly did not act with due diligence in making their claims and we cannot feel that the Telegraphers Agreement can be so construed as to justify this action on the part of the Claimants.

The Organization has quoted a ruling from the Tenth Circuit Court of Appeals "U. S. Steelworkers vs. New Park Mining," reported in 273 Federal Second at Page 352 in which the Court said in part and we quote, "The recognition provisions of the collective bargaining contract mean that if the work is performed on the premises, which falls within the bargaining unit, then the contract operates."

This decision is in accord with the consistent rulings of this Board that work contracted to a craft or class in the collective bargain may not be delegated or transferred to others not included in the Agreement coverage. Application of this principle here requires a finding that the Scope Rule of the Telegraphers' Agreement was violated in utilizing the clerk to perform service as agent on the dates involved. The fact that he was utilized to perform vacation relief does not change the finding because the Vacation Agreement itself precludes the crossing of craft or class lines in its application.

We find that the named Claimants were not qualified to perform the work of agent at Vassar. We also find that the Organization did not show that there was an idle Employe "on rest day" who qualified to perform the work on either of the three dates claimed on behalf of the senior idle Employe.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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

We find there was no violation of the Agreement for the reasons above set forth and the claims are denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of December, 1961.