

Award No. 10871

Docket No. TE-9172

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CLINCHFIELD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Clinchfield Railroad, that:

1. Carrier is in violation of the rules of the Agreement between the parties when it failed or refused to fill vacancy in the position of Clerk-Operator at Johnson City, Tennessee, during the period June 11 through June 15, and June 21 and 22, 1956, inclusive, with an employe holding seniority under the scope of the 'Telegraphers' Agreement; this work and responsibility being assigned by the Carrier to an employe outside the scope of the Agreement between the parties.

2. Because of this violation of the Agreement by the Carrier, it shall now be required to make redress in the form of pay for the position of Clerk-Operator at Johnson City, Tennessee to the senior idle employe on the 'Telegraphers' seniority roster on the seniority district, extra employe in preference, if any, not working on June 11-12-13-14-15-21 and 22, 1956, the proper employe to receive this compensation to be determined by a joint check of the Carrier's records.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between the Clinchfield Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement was effective September 1, 1935, and has been amended in many respects. The original agreement, as amended, is on file with this Division and is, by reference, included in this submission as though set out herein word for word.

This dispute was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. This Board, under the provisions of the Railway Labor Act, as amended, has jurisdiction of the parties and the subject matter.

This dispute involves the question as to whether Management violated the Agreement between the parties when, on June 11-12-13-14-15-21 and 22, 1956, it used an employe of another craft to relieve the Clerk-Operator at Johnson City, Tennessee.

rary vacancies of less than thirty days' duration and when so employed that individual's seniority starts as of the date he entered the service.

3. This claim has not been properly handled with the Carrier and is, therefore, improperly before the Board. Article V, Section 1(a) of the agreement between the Carrier and the employees provides that "(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based." (Emphasis ours.)

It will be noted that in claiming a violation of the agreement the Employees ask "redress in the form of pay for the position of clerk-operator at Johnson City, to the senior idle employee on the telegraphers' seniority roster on the seniority district, extra employee in preference, if any, not working on", etc.

This is exactly the sort of claim the parties to Article V intended to bar. The rule provides that claim must be presented by or on behalf of "the employee involved". No such claim has been presented to the Carrier. The term "the employee" means just what it says. It means the person or individual affected. Here the employees found no such individual. All employees covered by the agreement were employed.

This claim has not been properly presented to the Carrier and, therefore, is not properly submitted to this Board.

CONCLUSION

Carrier respectfully submits that a claim on behalf of an unnamed claimant has no standing. The failure of the Employees to comply with Article V of the May 20, 1955, agreement should, without consideration of any other rules of the agreement, require a denial award.

Furthermore, the employees have failed to claim or to show where the Carrier has violated a single rule of the agreement.

The Carrier has shown that its action in filling this temporary vacancy was in accordance with the rules and the prevailing practice under the current agreement.

We respectfully submit that this claim is wholly without merit and ask the Board to so find.

All matters contained herein have heretofore been presented to the duly authorized representatives of the Employees and have been made a part of negotiation on the property.

OPINION OF BOARD: It has been strenuously urged by the Carrier that since the Claimants were not identified by name the Employees have not complied with Article V, Section 1(a) of the time limit rule and consequently the claim is not properly before this Board. This point was not raised on the property by the Carrier. In any event it lacks merit as the identity of the Claimants, though not specifically mentioned, is readily ascertainable. See Award 9205 (Stone) and Award 10675 (Ables). The matter of determining the senior qualified idle employee available on each of the days for which the claim is made is only a matter of detail in checking the seniority records.

A number of other contentions were made by the Carrier for the first time after the dispute herein had been submitted to the Board—for the foregoing reason no comment will be made upon them in this Opinion. Suffice it to say, that such attempts to enlarge the issues have been consistently rejected by the Board and consequently we must here reject them.

These are the undisputed facts: On and before June 11, 1956, the position of Agent, Kingsport, Tennessee, was temporarily vacant and there being no extra employes qualified to work such position, the Carrier took W. C. Morrell, Clerk-Operator, owner of an assignment at Johnson City, Tennessee, from his regular assignment and used him as Agent at Kingsport. Mr. Morrell's assignment at Johnson City was then, by the Carrier, filled by using a Mr. Ledford who held a regular assignment as Clerk, holding no seniority under the Telegraphers' Agreement. Ledford was used on June 11-12-13-14-15-21 and 22, 1956.

It is the claim of the Petitioners that a Clerk was used on a Telegrapher's Assignment when a Telegrapher could have been required to work his rest days—that this was in violation of their Agreement effective September 1, 1935, and later amended.

The Carrier contended there was no extra operator available to perform this work and in order to afford relief for the position it was necessary to use Clerk Ledford to do it; that, under the circumstances, there was no violation of the Agreement.

The Petitioners then asked that a joint check of the records be made to determine who was the senior idle employe on the Telegraphers' seniority roster on the dates mentioned in the claim; this was refused by the Carrier, contending Carrier could not agree that the Agreement was violated and, therefore, could see no reason for making such a check.

At the time of this controversy there was in full force and effect a collective bargaining agreement entered into between the Carrier and the Petitioners, effective September 1, 1935, and amended in some respects thereafter, the pertinent parts of which are, as follows:

"RULE 1.

— Application —

This agreement applies to telegraphers, telephone operators (except switchboard operators), agents specified in list attached hereto and none other, agent telephoners, agent telegraphers, towermen, levermen and block operators."

* * * * *

Rule 3 (f), (g) and (l), as follows:

"(f) An employe required to transfer temporarily to a lower rated position than his regular assignment will be paid the rates applying to his regular assignment. (Emphasis ours.)

"(g) An employe temporarily transferred to a higher rated position than his regular assignment will be paid the rate applying to the position to which transferred." (Emphasis ours.)

* * * * *

"(i) When by competent authority, a regularly assigned employee is required to leave his home station to fill an emergency at some other point he will be allowed one (\$1.00) dollar per calendar day expenses in addition to his regular rate of pay as provided in paragraph f and g, provided, however, that employees will not be paid twice for the same service. This to apply to regularly assigned relief agents when away from home station, but will not apply to extra men."

* * * * *

In Rule 11(f) Case 4 — "Clerk Operator at Johnson City, Tennessee."

The Carrier contends that the Petitioners fail to cite any rule of the Agreement under which the Carrier is required to use employees occupying regular assignments to fill all temporary vacancies and, consequently, regularly assigned employees have no contractual right to temporary vacancies on other positions; that it, therefore, logically follows that there was nothing to prohibit the Carrier from filling the temporary vacancy in the manner that it did.

The question we then have to determine is whether an employee of another craft may properly be used, temporarily, to perform the work of a position covered by the Telegrapher's Agreement.

The position of Clerk Operator clearly comes within the scope of Rule 1 of the Agreement and is specifically mentioned in Rule 11(f) Case 4. Though there is no precise rule in the Agreement that one can point to covering the filling of temporary vacancies, it was within the contemplation of the parties to the Agreement that they should be filled by telegraphers under the Agreement is indicated by the language in Rule 3-(f) and (g) — "an employee temporarily transferred to a lower rated position" and "an employee temporarily transferred to a higher rated position" and Rule 3-(i) where provision is made for allowances when a regularly assigned employee is required to leave his home station.

It cannot be disputed that the primary purpose of a collective bargaining agreement is to preserve to the Organization and its members the positions and work of the particular craft involved and this Board is committed to the principle that the work of positions covered by an Agreement belongs to employees subject to that Agreement and may not properly be performed by employees of another craft. See Award 323. This award has been consistently followed down through the years.

We must, inevitably, come to the conclusion that this Carrier had no right to use a Clerk from another craft to fill a temporary vacancy in the Telegrapher's position.

It has been suggested by the Carrier that the force had to be rearranged to accommodate the General Chairman so that he might attend the convention of his Organization and that the Carrier had no other alternative under the circumstances than to appoint the Clerk Ledford to fill the Clerk-Operator's position. We cannot gainsay that this did present problems to the Carrier but we cannot hold that it was any justification for its violation of the Agreement.

However, the Carrier shall be required to make redress in form of pay for the position of Clerk-Operator at Johnson City, Tennessee, only on those days on which a senior idle employe was available—to be determined by a joint check of the Carrier's record.

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 the Agreement has been violated.

AWARD

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1962.