

**Award No. 11974**  
**Docket No. TE-10425**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Joseph S. Kane, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**TENNESSEE CENTRAL RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Tennessee Central Railway, that:

1. Carrier violated the Agreement, when on March 21, 1957, The Chief Dispatcher, Mr. W. C. Loden, by his Bulletin No. 6, assigned Operator-Clerk H. W. Bowles to the position of Operator-Clerk in the Cookeville Agency, and failed to assign Operator-Clerk B. C. Matheney. Mr. Matheney holds seniority dating from January 8, 1957, while Mr. Bowles holds seniority dated only from February 11, 1957.
2. Carrier shall compensate Operator-Clerk B. C. Matheney for eight (8) hours at the rate of pay of \$2.038 per hour, for March 25, 1957, and for each day thereafter, Monday through Friday, so long as Operator-Clerk Matheney is denied the right to work the Operator-Clerk position at Cookeville, Tennessee.
3. Carrier violated the Agreement when it failed to properly and correctly place Operator-Clerk B. C. Matheney on the Seniority Roster on January 8, 1957, and instead placed Operator-Clerk Matheney on the Seniority Roster at a later date, April 27, 1957.
4. Carrier shall correct the Seniority Roster dated July 1, 1957, copies of which were furnished me with your letter dated September 13, 1957, by placing B. C. Matheney thereon with seniority dating January 8, 1957 instead of April 27, 1957.

**EMPLOYEES' STATEMENT OF FACTS:** There is in full force and effect a collective bargaining agreement between Tennessee Central Railway Company, hereinafter referred to as Carrier or Company, and The Order of Railroad Telegraphers, hereinafter referred as Employees or Telegraphers. A copy of the Agreement is on file with this Division and is made a part of this submission as though set out herein word for word.

answering in detail the ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by the Petitioner in relation to such issue or issues.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employees and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This docket presents two questions for decision. (1) Did Carrier err in failing to assign Claimant to position of Operator-Clerk at Cookeville, Tennessee, on or about March 21, 1957? (2) Did Carrier assign proper seniority date for Claimant?

**Claim No. 1.**

At Cookeville, the Carrier maintained two positions in the station force. One was classified as Agent and the other Operator-Clerk. Both positions were covered by Telegraphers' Agreement.

On or immediately prior to January 7, 1957, the occupant of the Operator-Clerk position resigned. The Agent notified Carrier's Chief Dispatcher and requested assignment of a qualified extra employe to the position. There were no available qualified extra employes.

The Chief Dispatcher was aware that Claimant, B. C. Matheney, then occupying position of Clerk, at Monterey, Tennessee, was studying telegraphy. On January 7, 1957, in telephone conversation between Chief Dispatcher and Claimant, it was arranged that Claimant would report at Cookeville, on January 8, 1957, to begin service on the temporary vacancy.

In due course, the vacancy at Cookeville was bulletined in accordance with the rules and on February 13, 1957, assigned to H. J. Matheney, brother of Claimant. Mr. H. J. Matheney was not placed on the position, due to his working at Monterey. On March 4, 1957, H. J. Matheney was successful applicant for position at that point and the position at Cookeville was again bulletined.

On March 5, 1957, Claimant made application for the position, but on March 21, 1957, Chief Dispatcher assigned the vacancy to a junior employe on the ground Claimant was not qualified for the position. The position required qualified Morse telegrapher.

The Organization contends that the Claimant was fully qualified for the position of Operator-Clerk at Cookeville, at the time he made application therefor, and at the time the assignment was made on March 21, 1957, to the junior employe. There is no dispute as to the criteria to be utilized by the Board in making the determination of this question. Both sides agreed that the rule primarily involved is Rule 17 (a) reading:

"Employes covered by this agreement will be regarded as in line for promotion, preference being given to employes who have been longest in the service, provided they are qualified."

It is agreed that the burden of proof is upon the Claimant and the Organization to show that Claimant was qualified for the position applied for, since assignment to a regular assigned position is treated as a promotion.

The record does not permit a doubt that on January 8, 1957, when Claimant was assigned to position of Operator-Clerk at Cookeville, to fill the temporary vacancy, that he was not fully qualified to perform all the telegraphic duties of the position. The main thrust of the Organization's position is that his work on the position, five days each week (Monday through Friday), from January 8 through March 21, 1957, qualified him for promotion to the regular assignment. Although the record shows that application for the vacancy was entered by Claimant, on March 5, 1957, for the purpose of this opinion, we will consider his qualifications, as shown by the evidence, as of March 21, 1957, the date the junior employee was assigned.

On March 20, 1957, Chief Dispatcher Loden wrote the Claimant as follows:

"I am sorry I could not assign you to this position but I am sure you will understand that we must have a competent operator and that you are not ready to qualify as such."

On November 8, 1957, the Claimant wrote:

". . . I performed the assigned duties and drew the operators pay rate while here and although I realize I was a beginner . . ."

Dispatcher Brown in a letter in support of the Claimant states:

". . . I assure you none of us here had any trouble with you, only on one occasion did I have any at all and Mr. Smith was right with you and broke the monotony by helping you out which he was instructed to do . . ."

We find nothing in the record to indicate that Chief Dispatcher Loden was motivated, in his decision, by other than an honest belief that Claimant was not then qualified to perform all of the duties of the position. This is further supported by the fact, that when the Cookeville position again became vacant, in June, 1957, that Claimant applied for it and was assigned thereto by the Chief Dispatcher, being placed thereon commencing June 24, 1957.

We have fully and carefully evaluated all of the evidence offered by the Claimant and on his behalf. While this evidence, tends to shown that he was, in fact, occupying the position, and performing work thereon, during the period January 8 through March 22, 1957, it does not meet the standard of probative value necessary to overturn the decision of the Chief Dispatcher. Otherwise stated, it does not show that the actions of the Chief Dispatcher, in declining to award the regular assignment to Claimant, were arbitrary or capricious. The Chief Dispatcher had the responsibility of appointing an employee to the regular assignment, who had the necessary qualifications. The evidence does not show that Claimant possessed the requisite qualifications at that time. This part of the claim will be denied.

#### **Claim No. 2.**

On September 13, 1957, Carrier issued seniority roster, dated July 1, 1957. This roster showed seniority date of April 27, 1957, for Claimant, B. C. Matheney. The Organization, on behalf of the Claimant, immediately contested this date, contending that the correct date was January 8, 1957.

Rule 17 (c) provides:

"Service age will be effective and will date from the last time entering the service in the classes covered by this agreement."

The record shows that Claimant was employed as Operator-Clerk, Cookeville, a position covered by Telegraphers' Agreement, from January 8, 1957 to March 22, 1957, inclusive. The record further shows that he worked, on relevant dates, as follows:

March 25-29	Rockwood	Clerk
April 2-5	Crossville	Station Helper
April 8-12	Crossville	Operator-Clerk
April 15-May 3	Double Springs	Agent
May 7-17	Crossville	Operator-Clerk
May 28-31	Cookeville	Operator-Clerk
June 3-22	Algood	Agent-Operator

Carrier contends that the April 27, 1957 seniority date was fixed, because this was the date that Claimant passed train rules examination. There is no showing, however, that Claimant could not have passed such examination on January 8, 1957 or any other relevant date. The fact that Carrier did not choose to give examination on its operating rules until April 27, 1957, would not have any bearing on seniority of Claimant. There are no limitations in Rule 17 (c) in this regard. Entering service in the classes covered by the agreement, and not qualifications for certain positions, is the criteria.

While it is true that Claimant performed service in two clerical positions, for nine days, following his service under the Telegraphers' Agreement at Cookeville, Rule 17 (p) makes provision for such temporary transfer. Here it is provided:

"Employees accepting transfer to other classes of service than covered by this agreement, except to official positions, shall forfeit their seniority after having filled such positions more than six months."

We hold that Claimant entered service in the classes covered by Telegraphers' Agreement on the 8th day of January, 1957. It is clear from his work record, as set forth herein, and his acceptance of regular assignment at Cookeville, commencing June 24, 1957, that his entry into service covered by Telegraphers' Agreement was in every respect bonafide; and, that he did not lose such rights by temporarily working as a clerical employee. Claimant is entitled to seniority date of January 8, 1957, on Telegraphers' Seniority Roster.

**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 in failing to assign Claimant to a regular assignment, as Operator-Clerk at Cookeville on March 21, 1957.

That the Agreement was violated in failing to establish for the Claimant a seniority date of January 8, 1957.

AWARD

Claim Number 1 denied.

Claim Number 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary.

Dated at Chicago, Illinois, this 13th day of December 1963.