

Award No. 12771
Docket No. TE-11505

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
GULF, COLORADO & SANTA FE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Colorado & Santa Fe Railway that:

1. The Carrier violated the Agreement between the parties when, on May 29, 1958, it required or permitted Student Wire Chief J. D. Pool to displace Student Wire Chief, J. C. Zaruba, from an unfinished assignment on the Late Night Wire Chief Position, 11:45 P.M. to 7:45 A.M., at Temple, Texas, and

2. The Carrier shall now be required to pay Student Wire Chief, J. C. Zaruba, the difference between the rate of pay of the Late Night Wire Chief position at Temple, Texas, and the Student Wire Chief position, plus pay at the time and one-half rate for all time worked outside the assigned hours of the Late Night Wire Chief position, plus 8 hours at the time and one-half rate for work performed each Tuesday and Wednesday which were rest days of the Late Night Wire Chief position, beginning May 29, 1958, and continuing until the violation is discontinued.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the parties bearing effective date of June 1, 1951, and a Memorandum of Agreement signed at Chicago, October 19, 1945, are in evidence. The latter will be hereinafter referred to as the Student Wire Chief Agreement.

On or about September 22, 1957, Student Wire Chief J. D. Pool, assigned at Galveston, Texas, was used to fill a late Night Wire Chief position in the relay office at Galveston assigned hours 11:30 P.M. to 7:30 A.M. temporarily due to the regular incumbent beginning a leave of absence to attend school.

On or about April 3, 1958, Student Wire Chief J. C. Zaruba, assigned at Temple, Texas, was used to fill a position of late Night Wire Chief position at Temple, Texas, assigned 11:45 P.M. to 7:45 A.M. temporarily due to Frank Zaruba, Jr., regular incumbent, beginning his vacation.

OPINION OF BOARD: The Claimant, student wire chief Zaruba, was assigned to a temporary vacancy of the night wire chief position at Temple, Texas, and was subsequently replaced by student wire chief Pool. This personnel action is the subject of the dispute. The position in question was temporary and neither party to the controversy contends that it should have been bulletined in accordance with normal procedures. There is in evidence a memorandum of agreement which specifically provides for the establishment of positions known as "student wire chiefs", outlining the training period, the rates of pay, the method of training, promotion, the method of establishing Class (1) seniority as a wire chief and the restrictions on the exercise of seniority in the seniority district from which selected, while undergoing the two year training period, or beyond if there is no vacancy on a wire chief position.

Student Wire Chief Pool had completed two years of training and had passed the required examinations, but since there were no vacancies in the wire chief class to which he could be promoted, he was continued as a student wire chief. The Claimant had completed only six months of his two year training course, and had not passed the final examination at the time of his assignment to this temporary vacancy.

The Organization contends that Section 6 of the memorandum of agreement does not give student wire chiefs any bidding or displacement rights, since such rights of their very nature presuppose the existence of seniority rights. We agree, since it is clear from our analysis of the memorandum of agreement, that student wire chiefs, as such, do not have seniority rights, and hence do not have bidding or displacement rights in wire chief positions. These rights only accrue to them after they have finished their training course, passed the requisite examination, and have been assigned to a permanent wire chief position. Student Wire Chief Pool was exercising neither displacement nor seniority rights, because he simply didn't have them to exercise. Section 6 provides that Student Wire Chiefs will not be permitted to return to service in another class, in which they hold seniority under the Telegraphers' Agreement through the exercise of bidding or displacement rights, unless released from training as Student Wire Chiefs by the Carrier. This section has no bearing on the temporary use of Student Wire Chiefs to protect vacancies in the Wire Chief Class. Neither the Claimant nor Pool had seniority, and neither filled the position as a matter of right. The Carrier merely in its discretion made a determination to replace the claimant with a more experienced man. It was indeed a discretionary act on the part of management; it was neither arbitrary nor capricious and we are unable to state categorically that it violated any provision of the basic contract or of the memorandum of agreement. Succinctly stated, the claimant did not have a contractual right to remain in the vacancy and we must, therefore, deny the claim. (See Awards 12464, 10994.)

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 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1964.