

Award No. 12979

Docket No. TE-10169

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY
(Western Lines)**

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

1. The Carrier violated the Agreement between the parties when, on October 26, 1956, it failed and refused to assign Mrs. Viola Reeves, the senior bidder, to a position of Telegrapher-Clerk at Trinidad, Colorado, and

2. The Carrier shall pay Mrs. Viola Reeves, beginning October 26, 1956, and continuing each day thereafter, that she is held off the Telegrapher-Clerk position at Trinidad, in addition to what she had been paid for services performed at the straight time rate on other positions:

A. The equivalent of eight hours' pay at the straight time rate, on other than rest days, within the hours of the Trinidad position;

B. The equivalent of time and one-half rate for all work performed on rest days of said Trinidad position;

C. The equivalent of time and one-half rate for all work performed outside the assigned hours of said Trinidad position; and

D. Actual expenses incurred.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

As indicated by Employees' Exhibit No. 1 attached hereto and made part hereof, the Carrier issued Telegraphers' Bulletin No. 39, dated October 10, 1956, advertising a vacancy on a position of Telegrapher-Clerk at Trinidad, Colorado, hours 11:00 P.M. to 7:00 A.M., five days per week, including holidays with assigned rest days Wednesday and Thursday, rate \$2.045 per hour. This rate is subject to future increases or decreases.

In conclusion, the Carrier respectfully asserts that the Employees' claim is wholly without support under the agreement rules and should be denied in its entirety for the reasons expressed herein. The Carrier also wishes to point out that the Employees claim for penalties in behalf of Mrs. Reeves retroactively to October 26, 1956 is not only unreasonable and without support, but is, moreover, improper for the reason that Mrs. Reeves did not return to active service from leave of absence until November 15, 1956, and could not possibly have a claim for penalty compensation while on leave of absence.

(Exhibits not reproduced.)

OPINION OF BOARD: The sole issue here is whether the effective Agreement prevents an employee, while on leave of absence, from exercising his bidding and assignment rights.

The essential facts are not in dispute. Claimant was the senior qualified applicant for the position of third trick telegrapher clerk at Trinidad, Colorado. The vacancy on that position was bulletined while Claimant was on leave of absence. She bid for it but an employee junior to her in seniority was assigned.

The Carrier contends that by reason of Claimant's having requested and obtained a leave of absence, she thus had removed herself from active service and, accordingly, was not an employee qualified to place a bid for the vacancy. Carrier cites Section 1 (d) of Article XVIII and past practice on this property as support for its position. Section 1 (d) reads as follows:

"Section 1-d. An employee returning from leave of absence granted under these Sections 1 may resume his former position if it has not been abolished or taken by a senior employee through the exercise of seniority displacement rights or take his place on the extra list and, except as otherwise provided in Article XXI, Section 10-g, employees displaced thereby will have the same rights. If his former position has been abolished or taken by a senior employee through the exercise of seniority displacement rights, he may exercise displacement rights in the manner prescribed in Article XX, Section 15-a or 15-b, or Article XXI, Sections 11 dependent upon whether he was in road or relay service when leave of absence was granted."

The Employees place primary reliance on 6-a of Article XX, which says:

"Section 6-a. When new positions are created or when permanent vacancies occur, they will be promptly bulletined as per Section 10-a of this Article XX to all employees on the seniority district; the successful bidder to be promptly notified, and placed on the position within thirty (30) days after close of bulletin. If not so placed within thirty (30) days the employee will be paid, beginning with the 31st day after close of bulletin, as provided in Section 2-a of Article X."

Article XVIII, entitled "Leave of Absence", sets out the conditions upon which employees may seek and obtain leave from active service, as well as other rules pertaining to conduct while on leave and rights upon return to service. Section 1 (d), relied on by Carrier provides a method under which a returning employee may resume his former position, take his place on an extra list, or exercise displacement rights. Neither this nor any other section of Article XVIII properly may be interpreted to express or imply that an employee while on leave may not exercise those bidding and assignment rights so clearly granted by Section 6-a of Article XX.

As to Carrier's affirmative defense based upon an alleged practice to refuse to accept bids from employes on leave of absence, it suffices to say that even had the fact of such practice been conclusively established, it could not prevail as against the rules of the effective Agreement. (See Award 6144). The language of Section 6-a of Article XX is clear and unambiguous. It permits of no exceptions or modifications, express or implied. It applies directly and specifically to the agreed-upon facts of this case and is, therefore, controlling.

Accordingly, Part 1 of the Claim is sustained; Part 2 will be sustained but only from and after the date Claimant's leave of absence expired and she became available for service.

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 was violated.

AWARD

Claim sustained to extent shown in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of October 1964.