Award No. 13170
Docket No. TE-11838

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, St. Paul, Minneapolis and Omaha Railway that:

1. Carrier violated the agreement between the parties when it failed to grant displacing rights to M. E. Newman, J. J. Evan, R. I. Eakins, R. H. Finstad and C. T. Nilssen resulting in time lost.

2. Carrier shall be required to compensate M. E. Newman, J. J. Evan, R. I. Eakins and R. H. Finstad in the amount of a day's pay each for time lost on March 10, 1959 and C. T. Nilssen in the amount of two days' pay for time lost on March 10 and 11, 1959.

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

On March 5, 1959, Mrs. A. M. Wengel, agent-telegrapher, Chili, Wisconsin; C. T. Nilssen, agent-telegrapher, Roberts, Wisconsin; M. E. Newman, agent-telegrapher, Ellsworth, Wisconsin; J. J. Evan, agent-telegrapher, Hammond, Wisconsin; R. I. Eakins, agent-telegrapher, Knapp, Wisconsin, and R. H. Finstad, agent-telegrapher, Drummond, Wisconsin (named in seniority order) received a notice that their positions were abolished effective with the end of their tour of duty March 9, 1959. All of the positions are on Seniority District No. 2, as described in Rule 12 of the agreement.

Rule 14 of the agreement is the governing rule and reads as follows:

"RULE 14.

ACQUIRING DISPLACING RIGHTS

(a) Except as otherwise provided an employe will acquire displacing rights under any of the following conditions which may be exercised only in manner provided in this rule — (1) when his position is abolished — (2) when displaced by another employe.

The "Opinion of Board" in Third Division Award No. 1215 went on to quote the United States Supreme Court in the case of **Baldwin v. Travelingmens' Association**, 283 U. S. 522, 525-526:

> "Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties. We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his cause."

Likewise, the Fourth Division in Award No. 474, Railroad Yardmasters of America versus Pennsylvania Railroad, with Referee I. L. Sharfman, held:

> "Such splitting up of controversies as is here involved is neither fair to the carrier nor conducive to the effective performance of the Board's work."

First Division Award No. 6334 stated:

> "This Division hereby definitely adopts the rule that controversies are not divisible and may not be brought to it separately as protest and as claim for compensation."

In Award No. 13307, the First Division stated:

> "Claimant may not bring a series of claims based upon one act. That he did not elect to bring to the attention of the Division his entire claim for damages is not a matter of our concern."

The claims presented in this docket, having already been presented in the Docket involving ORT File 3015, should be denied.

OPINION OF BOARD: The facts are not in dispute. On March 5, 1959, Mrs. A. M. Wengel and the five Claimants received notice that their positions were abolished effective at the end of their tours of duty on March 9, 1959. On March 10, Mrs. Wengel notified Carrier she would not displace but would retire. She was the most senior of the group.

Although Claimants made inquiries about positions subject to displacement, the Chief Dispatcher held up all displacing until he heard from Mrs. Wengel. When he did, he notified Claimants and permitted them to make a displacement the following day, resulting in a loss of a day's pay.

The question submitted involves the following Rules:

"RULE 14.

ACQUIRING DISPLACING RIGHTS

(a) Except as otherwise provided an employe will acquire displacing rights under any of the following conditions which may be exercised only in manner provided in this rule — (1) when his position is abolished — (2) when displaced by another employe.

DISPLACING RIGHTS

(b) An employe acquiring displacing rights shall have the option, provided seniority and qualifications are sufficient and request is made within five days of:

First: Displacing any of the seven junior employes holding permanent assignments on the seniority district, not including those holding 'temporary' or 'seasonal' positions or those holding Star agencies.

Second: Displacing any junior employe holding a 'temporary' or 'seasonal' position.

Third: Revert to the extra list.

* * * * *

(f) When two or more positions are abolished on the same day on the same seniority district, the senior employe affected has the right to his choice of the positions held by employes subject to displacement. Employes (the one assigned and the one displaced) will be notified without delay. Employes affected by the operation of this rule will, upon inquiry, be advised by the officer in charge as to employes and positions occupied subject to displacement under the various options of this rule. . . ."

Claimants insist that under Rule 14 (f), the Chief Dispatcher should have permitted the junior employes to make a selection and displace while the senior employe was making up her mind. If the senior employe then selected a position that a junior had already displaced, the latter would give way and displace someone else.

In our opinion Carrier correctly interpreted Rule 14 (f) which provides that the senior employe has the first choice and until that choice was made the other employes must wait. The interpretation used by Claimants might result in a chaotic series of displacements of recent displacements. If Claimants had been allowed to displace on March 10, and Mrs. Wengel had elected to displace the most senior Claimant on March 10, each of the Claimants would be displacing the next senior Claimant on March 11. The Rule avoids this possibility by providing for the orderly procession of displacements in order of seniority. Claimants' loss of pay was due not only to the operation of the Rule, but to delay of their fellow-employe, Mrs. Wengel, in making up her mind.

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

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 16th day of December, 1964.