

Award No. 13227

Docket No. TE-12688

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ANN ARBOR RAILROAD COMPANY

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

1. The Carrier violated the parties' agreement when it used junior extra telegrapher J. E. Snyder to fill temporary vacancies on the third shift telegrapher-leverman's position on May 5, 12 and June 2, 1960, and on the second shift telegrapher-leverman's position at Hallett, Michigan, on May 15, 1960, at a time when senior extra telegrapher T. G. Sage was idle, available, qualified and willing to perform the work.

2. The Carrier shall, because of the violation set out in part 1 of this statement of claim, compensate extra telegrapher T. G. Sage, a day's pay at the rate of the third and second shift telegrapher-leverman's position at Hallett for each of the four (4) days on which he was deprived of work by reason of the Carrier's violative act.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the parties to this dispute, effective September 1, 1955, and as otherwise amended.

T. G. Sage, hereinafter referred to as claimant, entered the Carrier's service on July 9, 1956, and pursuant to the provisions of Rule 23 of the parties agreement acquired a standing on the seniority roster as of that date over the "Ann Arbor Railroad from Toledo to Frankfort, both inclusive."

J. E. Snyder, hereinafter referred to as the "junior employe" entered the Carrier's service on September 18, 1958, and in line with the provisions of Rule 23 he too acquired a standing on the seniority roster as of that date over the "Ann Arbor Railroad from Toledo to Frankfort, both inclusive."

In the exercise of seniority as acquired under Rule 23 the claimant in accordance with the provisions of Rule 24 (Filling Positions) became the regularly assigned occupant of a telegrapher's position at Boat Landing, Frankfort, Michigan. He held this position until displaced therefrom by the occupant of the agent-telegrapher's position at Beulah, Michigan, following which he reverted to the extra list.

Award 8016—"Article 18 (a) Senior employes on the Extra list if available will be given preference, but one Extra employe will not be permitted to displace another Extra employe on an unfinished assignment. An Extra employe cannot claim extra work in excess of 40 hours in his work week if another Extra employe who has had less than 40 hours in his work week is available. When an Extra employe takes the assignment of a regular employe, he assumes the conditions of such assignment, including the work week and rest days thereof." (Emphasis ours.)

Award 8346—"Article 3 (k) Seniority rights of employes covered by these rules may be exercised only in case of vacancies, new positions, or reduction of forces, or as otherwise provided in this Agreement.

'NOTE: Where Federal and/or State laws impose restrictions not consistent with assignment, occupant of such position may exercise seniority by displacing any junior employe on a position not so restricted.'

In the absence of a restriction imposed by law or granted to the employes by agreement through the processes of collective bargaining, an employer has the right to manage its business and direct the working force as the discretion of its officers may indicate will best serve its needs, and it is the function of good management to arrange the work, within the limitations of the collective agreement, in the interests of economy.

Therefore, as the telegraphers' agreement does not grant senior extra telegraphers first call to fill temporary vacancies, it was within the scope of good management to use a junior extra telegrapher, both qualified and on hand at Toledo, to fill temporary vacancies at Hallett Tower at Toledo, and to thus eliminate the expense involved in having an extra telegrapher dead-head from Beulah, where he maintained his headquarters without compulsion of the company, to Toledo, a distance of about 279 miles, and a similar distance on the return trip from Toledo to Beulah in connection with filling each of the four vacancies here involved.

This Board has no jurisdiction to supply that which the parties' agreement does not contain.

The claim should be dismissed, and if not dismissed, denied.

(Exhibits not reproduced).

OPINION OF BOARD: There is no dispute as to the facts at issue here: Claimant, T. G. Sage, had acquired standing on the seniority roster over the Ann Arbor Railroad from Toledo, Ohio, to Frankfort, Michigan on the date of July 9, 1956. J. E. Snyder, the junior extra employe, involved, acquired seniority on the same seniority roster on the date of September 18, 1958; Sage maintained headquarters at Beulah, Michigan, and Snyder maintained headquarters at Toledo, Ohio. To fill temporary vacancies on relief positions located within the Toledo Terminal, Carrier used Snyder, the junior extra telegrapher, to free these temporary vacancies at Hallett, Michigan on the following days—May 5, 12, 15 and June 2, 1960. Toledo, Ohio, is about 4 miles from Hallett and Beulah, Michigan, is about 279 miles from Hallett.

It is the position of the Claimant that he held a preferential right under the seniority provisions of the applicable Agreement contained in Rule 23 of

the Agreement to fill the temporary vacancies in question against an employe with less seniority right.

It is Carrier's position that in the absence of a rule in the Telegraphers' Agreement granting senior extra telegraphers first call to fill temporary vacancies, the Carrier was not prohibited from using a junior extra telegrapher, both qualified and available at Toledo, Ohio, to fill the temporary vacancies at Hallett rather than to deadhead an extra telegrapher from Beulah, Michigan, a distance of approximately 279 miles.

The sections of Rule 23 insofar as they are pertinent to the present controversy are, as follows:

RULE 23

SENIORITY, RIGHTS AND PROMOTION

"(a) Seniority rights of employes covered by this agreement will date from the last time of entering the service, and will extend over The Ann Arbor Railroad from Toledo to Frankfort, both inclusive.

(b) A roster of all employes entitled to seniority under this agreement will be issued to each office on January 1st of each year, and copy furnished the General and Local Chairman.

(c) Employes covered by this agreement are in line for promotion, and where qualifications are sufficient, seniority will prevail.

* * * * *

(k) A junior extra employe assigned to a temporary vacancy will hold same for five (5) days, after which he may be displaced by a senior idle extra employe, who must make proper application to the Chief Dispatcher. This does not apply to vacancies where auditor's check is necessary. * * * * *

In Rule 23 there is no specific section directing that temporary vacancies shall be filled according to the seniority roster other than those requiring bulletining.

It must be conceded that a number of well considered awards have held that it is within the spirit, even though not within the letter of an Agreement, that seniority should be recognized in filling temporary vacancies as well as permanent ones.

However, the instant case must be determined in accordance with the Seniority Rule effective on this Carrier. In Section (k) of Rule 23, the pertinent parts of which have been heretofore cited, we note the following:—

"(k) A junior extra employe assigned to a temporary vacancy will hold same for five (5) days, after which he may be displaced by a senior idle extra employe, who must make proper application to the Chief Dispatcher. * * * * *

It is significant that the term "junior extra employe" is explicitly used. This affords an inference that a reasonable interpretation of Section (k) is that a "senior extra employe" may also be available at such time as a temporary vacancy occurs, and that Carrier is privileged to use the junior extra

telegrapher to fill a temporary vacancy rather than a senior extra telegrapher. We must, if possible, give effect to all the provisions of an Agreement and any other interpretation of Section (k) would render it meaningless. The reservation that the "senior" idle telegrapher has the right to displace such junior extra telegrapher after five (5) days protects the seniority right of the senior extra telegrapher.

Under all the facts and circumstances of this case and pursuant to the Seniority Rule of this effective Agreement, in the absence of any showing that the action of the Carrier was arbitrary, capricious or unreasonable we must find that the Agreement has not been violated.

This decision is based on the Seniority Rule contained in the Agreement effective on this Carrier and is not to be regarded as in conflict with prior awards of this Division based on different rules.

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 has not been violated.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 28th day of January 1965.