

Award No. 14893

Docket No. TE-12272

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

David Dolnick, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**
(Formerly The Order of Railroad Telegraphers)**THE PENNSYLVANIA RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim is hereby made for eight (8) hours' pay, pro rata rate, for Extra Furloughed Operator D. E. Kalich on each of the following days: December 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18 and 19, 1957, account Extra Operator Picklesimer being recalled to duty in violation of Rule 2-X-1 of the existing O.R.T. Agreement.

Extra Operator Kalich has more seniority on the Roster than Operator Picklesimer; Rule 2-X-1 states, "Employees shall be laid off in reverse order of their seniority. When force is increased they shall be recalled to service in the order of their seniority."

Since this is a violation of Rule 2-X-1, please advise claimant the amount that will be allowed and the payroll upon which payment will be made.

Claim is hereby made for eight (8) hours pay, pro rata rate, for E. Wheeler on the following dates: December 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 1957.

Claim is hereby made for eight (8) hours pay, pro rata rate, for D. D. Sturgeon on the following dates: December 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 1957.

EMPLOYEES' STATEMENT OF FACTS: Commencing December 1, 1957, a three weeks vacation relief assignment occurred in Carrier's "GY" Indianapolis, Indiana telegraph office, a position covered by the Telegraphers' Agreement. No extra employees were immediately available, consequently, the Carrier found it necessary to resort to calling a furloughed employee as authorized by Regulation 2-X-1 of the agreement which states that:

"Employees shall be laid off in reverse order of their seniority. When force is increased they shall be recalled to service in the order of their seniority, provided they have kept their employing officer informed of their address."

ployes allege; and if so, whether the Claimants are entitled to the compensation requested in the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Employees contend that Claimants were not called back in their turn as required by Regulation 2-X-1 and that they are also entitled to compensation under Regulation 5-E-1.

Regulation 2-X-1 reads, in part, as follows:

"2-X-1. Employees shall be laid off in reverse order of their seniority. When force is increased they shall be recalled to service in the order of their seniority, provided they have kept their employing officer informed of their address . . ."
The pertinent part of Regulation 5-E-1 reads:

"5-E-1. So far as practicable, extra work on Group 2 assignments shall be divided equally among qualified extra employees . . ."

It is true that Mr. R. M. Picklesimer, who had less seniority than Claimants, was recalled from furlough to fill a relief vacation vacancy. It is also true, however, that Mr. R. M. Picklesimer was recalled as a printer operator, that he had been hired as a block operator, that he had worked as printer operator, and that the Claimants, who were the three senior furloughed employees, never performed service as block operators or as printer operators. The record also shows that there were no qualified extra employees to fill this position. Mr. Picklesimer was the senior qualified furloughed employee.

Regulation 1-A-1 must be considered in relation to the rules urged by the Employees. That rule reads:

"1-A-1. Assignments to positions subject to this Agreement shall be based on ability, fitness and seniority; ability and fitness being sufficient, seniority shall govern."

This is a specific rule which precedes and qualifies Regulation 2-X-1. Seniority applies only after ability and fitness. Since Claimants did not have the ability and fitness to fill the vacancy, their superior seniority over Picklesimer did not apply.

There is no evidence that Carrier acted improperly in filling this vacancy. "So far as practicable" as used in Regulation 5-E-1 certainly permits the Carrier to use its discretion in the assignment of qualified employees. And that rule specifically provides for equal work distributed only "among qualified extra employees". Claimants were not qualified.

For the reasons herein stated, we are obliged to conclude that there is no merit to any of the claims.

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 28th day of October 1966.