

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arnold Zack, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Detroit, Toledo & Ironton Railroad that:

1. The Carrier violated the Agreement between the parties when by Bulletin 16A issued June 30, 1959, it assigned an individual to the position of Agent, Napoleon, Ohio, who held no seniority in any of the classifications named in the Scope, Rule 1, of the Agreement between the parties.

2. The Carrier shall now assign the position of Agent, Napoleon, Ohio, to an employe of the Carrier covered by the Scope of the Agreement between the parties on the date the position was advertised, June 15, 1959, and with a seniority date established as provided in the Agreement rules on or before June 15, 1959.

3. When the Carrier has complied with paragraph 2 above and placed the employe on the position at Napoleon, that employe shall be compensated for the time held off of the position, because of the improper assignment cited in paragraph 1 of this claim, for the difference in the actual earnings while deprived of the Napoleon assignment and the amount of earnings he would have received if placed on the position at Napoleon as of the date of the improper assignment.

EMPLOYEES' STATEMENT OF FACTS: The Carrier did by Bulletin No. 16, dated Dearborn, Michigan, June 15, 1959, advertise the position of Agent at Napoleon, Ohio, this bulletin being reproduced below for ready reference:

"DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY
TELEGRAPHERS' AGREEMENT

BULLETIN NO. 16

Dearborn, Michigan
June 15, 1959

selecting men for Note A positions would be destroyed. Therefore, when the Agent at Napoleon, who had been the agent there for 38 years, stated he was going to retire, the vacancy was advertised on Bulletin No. 16, June 15, 1959. The brief description of duties were shown on the bulletin as:

"This is a note 'A' position. Applicant must have a thorough knowledge of station work, be qualified to supervise a large office force and have complete understanding of tariffs, rates and yard operations."

Requests for the position in the form of bids were received from the following employees holding seniority under the ORT agreement:

J. L. McCoy
A. Anderson
R. W. Lowery
R. P. Kimmert
C. J. Boudreau

In addition, an application was received from Harold E. Altherr, an employee holding the position of Chief Clerk at the Carrier's Toledo, Ohio freight station, a position within the scope of the agreement with the Brotherhood of Railway and Steamship Clerks. The position was assigned to Mr. Altherr, and he took up his duties at Napoleon on August 10, 1959. The retiring agent remained until August 31, 1959.

(Exhibits not reproduced.)

OPINION OF BOARD: In the instant case the Carrier assigned an employee lacking seniority in the ORT to the position of Agent, Napoleon, Ohio.

The Organization contends that the parties' Agreement requires that such position be filled by an employee from the ORT seniority roster, although admittedly without regard to his seniority standing.

The Carrier denies that this is so, and asserts that anyone may be assigned to the post, whether or not he has ORT seniority.

Footnote A of the parties' Schedule of Position and Rates of Pay clearly states, in reference to the position of Agent Napoleon, that:

"The Company may fill such vacancies without regard to seniority."

To construe the provision as the Organization argues is proper would require the final phrase to read "without regard to the amount of seniority." But such language is neither present nor implied.

As the parties drafted the provision it is possible of only one interpretation, and that is that the position may be filled by the Carrier irrespective of whether the individual possesses any ORT seniority.

Accordingly, the claim must be denied.

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 16th day of December 1966.