

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)****John J. McGovern, Referee**

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)****UNION PACIFIC RAILROAD
(Western Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (Western Lines), that:

1. Carrier violated the Agreement between the parties when it failed and refused to assign T. B. Burton to the position of agent at Pendleton, Oregon, as advertised in Bulletin No. A-17 of September 1, 1962.

2. Carrier shall assign T. B. Burton to the position of agent at Pendleton, Oregon and shall pay him the difference between the rate of pay of the position(s) he has occupied and the rate of the said position at Pendleton, commencing on October 25, 1962 and continuing thereafter until the violation outlined above is corrected.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective October 1, 1959, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The position of Agent at Pendleton, Oregon is one of many on Carrier's lines that is monthly rated. The monthly rate of pay covers all services rendered except those rendered on one rest day per week which is usually Sunday. Assignments to these positions are not made strictly in accordance with the bulletin and assignment rules but are bulletined and applications are considered on the basis of qualifications. The applicant must be approved by the General Manager and the Traffic Department. Where qualifications are sufficient, seniority governs.

On September 1, 1962, Superintendent G. H. Baker issued Bulletin No. A-17 which included the advertisement of vacancy in the position of Agent at Pendleton, showing Sunday as rest day, no assigned hours, rate of pay \$639.70 per month, assignment to be made as provided in Rule 2 and the qualifications were stated as agency work, handling station work and supervise station forces.

The General Chairman responded by letter dated February 22, 1963, copy of which is attached as Carrier's Exhibit J, rejecting Assistant to Vice President-Personnel's decision. The Organization stated that, although Claimant Burton was not the senior qualified applicant for the position, it had the right to institute a claim in the name of any employee it elects.

A third conference was held between the parties at Portland on March 18, 1963, at which time the claim of Zielke for the position at Hood River and of Burton for the position at Pendleton were again discussed. The records of both employees were exhaustively reviewed at the conference; and under date of April 4, 1963, the Assistant to Vice President-Personnel wrote the General Chairman reciting at length the reasons why Carrier did not consider Zielke or Burton qualified for the positions at Hood River or Pendleton and pointing out the prior practice with respect to such appointments. A copy of that letter is attached as Carrier's Exhibit K.

The General Chairman wrote the Assistant to Vice President-Personnel under date of April 8, 1963, advising that his decision was unacceptable. Copy of that letter is attached as Carrier's Exhibit L. In answer, the Assistant to Vice President-Personnel replied under date of April 17, 1963, copy of which is attached as Carrier's Exhibit M, reaffirming his prior position and making further reference to the prior practice on this property.

The parties held a fourth conference at Portland on April 30, 1963, to again review the issues surrounding the claims concerning the appointment of the Rule 2 agents at Hood River and Pendleton. The Assistant to Vice President-Personnel's letter dated May 23, 1963, per copy attached (Carrier's Exhibit N), confirmed the Carrier's position and reaffirmed denial of the claims.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claimant in the instant case applied for the position of Agent at Pendleton, Oregon, a monthly rated position covering all services rendered except those rendered on one rest day per week which is usually Sunday. Assignments to these positions are not made strictly in accordance with the bulletin and assignment rules, but are bulletined and applications are considered on the basis of qualifications. The Applicant must be approved by the General Manager and the Traffic Department. Where qualifications are sufficient seniority will govern.

The Organization, on behalf of Claimant, urges that his qualifications were sufficient, and that as a consequence, when Carrier appointed someone junior to Claimant to the position in question, it stood in violation of rules 2 (e), 47 and 48 of the Agreement. Rule 2 (e) is quoted below:

"RULE 2.

MONTHLY RATED POSITIONS

(e) Monthly rated positions included in this rule classified as agent-telegrapher will be bulletined and assigned in accordance with the bulletins and assignment rules. All other monthly rated positions included in this rule will be bulletined and applications considered on basis of qualifications. Applicants must be approved by the general manager and Traffic Department. Where qualifications are sufficient seniority will govern."

The Organization avers that the Claimant's qualifications were sufficient and that being senior to the individual given the position, the Carrier by rejecting his application, acted in an arbitrary, capricious and unreasonable manner. This is precisely the sole question to be determined.

This Board, through a long series of awards, has consistently held that Management has the right to determine the qualifications of employees contending for various positions, and in the absence of indisputable evidence that Carrier's action has been arbitrary, capricious and unreasonable, has refused to substitute its judgment for that of the Management's in the determination of qualifications. The burden of proof to demonstrate such action by the Carrier with a preponderance of evidence, rests with the Claimant. The record in this case does not support the Claimant's contentions in that respect. We do not find that the Carrier was arbitrary, capricious or unreasonable and will deny the Claim.

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 July 1967.