



Award No. 16311

Docket No. TE-15461

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

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

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on the Norfolk Southern Railway, that:

1. Carrier violated the Agreement between the parties when on and after February 17, 1964, it improperly authorized the displacement of Operator-Clerk D. S. Fisher from his position at Elizabeth City, North Carolina, by Train Dispatcher W. W. Ramsey.
2. Carrier shall restore Mr. Fisher to his assignment at Elizabeth City and pay him for all time lost from February 17, 1964, until restored.
3. Carrier shall compensate all employees who were adversely affected by such displacement for wages lost beginning February 17, 1964 and thereafter until date Mr. Fisher is restored to his position.

EMPLOYEES' STATEMENT OF FACTS: Immediately prior to the date of claim herein, Claimant was the regularly assigned Operator-Clerk at Elizabeth City, North Carolina.

On February 15, 1964, Mr. E. L. Benton returned from Federal military service and exercised rights he held in Carrier's service by displacing on the swing-relief position in Carrier's dispatchers' office at Coleman Place, Norfolk, Virginia. The incumbent of the swing-relief position displaced Dispatcher W. W. Ramsey on the third shift position in the same dispatchers' office. There being no other dispatcher position available for Mr. Ramsey, he exercised what he and the Carrier considered to be his displacement rights under the Telegraphers' Agreement by displacing Claimant effective February 17, 1964. Claimant was then required to revert to the extra telegrapher list.

Copy of the Agreement between the parties, effective August 1, 1937 is on file with your Board and by this reference is made a part of this submission.

Clerk at Carolina Yard, Norfolk, Virginia, on an extra basis as Ramsey did not at the time have sufficient days of dispatching service to comply with Article 4 of the American Train Dispatchers' Association Agreement of September 15, 1947, reading as follows:

"Employees entering train dispatching service on or after the effective date of this agreement will not acquire a seniority date as train dispatcher until after they have performed an aggregate of sixty (60) days' dispatching service, when, if accepted their seniority will begin as of the first day of such probationary period."

On May 10, 1962, W. W. Ramsey, having performed the required number of days of dispatching service as called for in the Dispatchers' Agreement, Article 4, was assigned to the Third-Trick Dispatcher's position at Coleman Place. The position of Second-Trick Operator-Clerk at Carolina Yard vacated by W. W. Ramsey, was advertised for applicants, and Operator D. S. Fisher bid in and was assigned to same May 24, 1962. On March 3, 1963, Operator-Clerk D. S. Fisher was displaced by Operator-Clerk J. C. Walker and D. S. Fisher returned to the extra list. On December 6, 1963, Operator-Clerk D. S. Fisher bid in and was assigned to position of Operator-Clerk at Elizabeth City, North Carolina.

After being discharged from the Armed Services, February 16, 1964, Dispatcher E. P. Benton returned to service and displaced Swing-Trick Dispatcher V. C. Martell, who in turn displaced Third-Trick Dispatcher W. W. Ramsey. As Ramsey's seniority as dispatcher would not permit further displacement by him in that craft, he returned to the craft from which he was promoted and exercised his rights over Operator-Clerk D. S. Fisher at Elizabeth City, N. C., February 17, 1964. Operator-Clerk Ramsey was displaced from his newly acquired position of Operator-Clerk at Elizabeth City, N. C., June 26, 1964, by a senior employee in normal exercise of seniority rights.

OPINION OF BOARD: The return from military service of E. L. Benton, a Train Dispatcher, led to a series of seniority changes in which junior employee, W. W. Ramsey, Train Dispatcher, was displaced. Finding that there was no dispatcher position available, Mr. Ramsey exercised what he considered his right under the Telegraphers' Agreement and displaced Operator-Clerk D. S. Fisher on February 17, 1964. Mr. Fisher, as a result, had to go on the extra Telegraphers' list.

Mr. Fisher claims he was improperly displaced by Mr. Ramsey in violation of Addendum No. 1 (Interpretation of Article 25) of the Telegraphers' Agreement.

Carrier denies the claim, pointing out that Mr. Ramsey lost his position as a Train Dispatcher because of a reduction in force which entitled him to exercise his seniority rights as a Telegrapher in accordance with Addendum No. 1.

Addendum No. 1 reads as follows:

"It is mutually agreed that employees promoted to official or subordinate official positions with the Norfolk Southern Railway Company may upon returning to the class of service covered by the agreement due to reduction in force or abolition of official or subordinate official position exercise their seniority by returning to the position held at the time of promotion, if such position is then held by a

junior employee, or may take any position that has been advertised subsequent to promotion and filled by a junior employee at time or return to service. Promoted employees returning to service for reasons other than reduction in force or abolition of official or sub-official position will be placed on extra list and allowed to assert their seniority by performing extra and relief work or by bidding on vacancies."

Pursuant to this Memorandum Agreement, Mr. Ramsey was eligible to displace Mr. Fisher under two conditions: If there was a reduction in force or if there was abolition of a position. Since the parties agree that a position was not abolished, the central question in this dispute is whether there was a reduction in force.

Contrary to Carrier's contention that a reduction in force occurred because four men were available for three dispatcher positions when Mr. Benton returned from military service, the record discloses no change in the number of positions. Three dispatcher positions were in existence before his leave, and three remained upon his return. The fact that four men acquired rights in three positions cannot be construed to constitute a reduction in force.

Inasmuch as there was not a reduction in force, Mr. Ramsey improperly replaced Mr. Fisher, for that requirement in Addendum No. 1 was not satisfied.

The Agreement having been violated, we allow compensation for wages Claimant would have been entitled to, less what he earned from February 17, 1964 to June 26, 1964, because on the latter date the record indicates that Mr. Fisher would have been properly displaced by another senior employee.

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 violated by the Carrier to the extent shown in the Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1968.

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