



Award No. 16511
Docket No. TE-15633

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk and Western Railway (Virginian District), that:

1. Carrier violated and continues to violate the terms of an Agreement between the parties hereto, when it requires or permits the regular occupant of a rest day relief position, Radford, Virginia, to improperly relieve the regular occupant of the agent-telegrapher position at Celco, Virginia on one of the assigned rest days in his position.

2. Carrier shall, because of the violation set out above, compensate W. J. Euchler, extra telegrapher-clerk, a day's pay at the rate of the agent-telegrapher's position Celco, Virginia for January 27, February 3, 17, 24, March 2, 1964 and for each such date thereafter whereon the violation complained of continues, except for such dates on which W. J. Euchler is not available for work in which event Carrier shall compensate the senior idle telegrapher, extra in preference, on the seniority district, a day's pay at the rate of the agent-telegrapher's position, Celco, Virginia.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Norfolk and Western Railway Company (formerly the Virginian Railway Company), hereinafter referred to as Carrier, and its employees in the telegraphers' craft and class, hereinafter referred to as Employees, represented by The Order of Railroad Telegraphers, hereinafter referred to as Organization, effective September 1, 1945 and as amended. Copies of said Agreements are available to your Board and are, by this reference, made a part hereof.

Among the several Agreements between the parties hereto is the Agreement of June 18, 1959 for the protection of employees involved in the merger between the Norfolk and Western Railway Company and the Virginian Rail-

Agent's rate of pay claimed for the above dates due to V. L. Gray working the position of Agent, Celco, Virginia. This claim filed account Chief Dispatcher B. T. Umberger violated Section 4 of the August 31, 1960 Agreement in assigning V. L. Gray without her having complied with above mentioned agreement.

This is to be a continuing claim until this violation has been corrected to conform with existing agreements between the Carrier and our organization."

The Carrier declined the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: Memorandum Agreement dated 31 August, 1960, provided for the seniority dates of employes on the Norfolk and Red River Divisions of the former Virginian Railway to be dovetailed with those of employes on the Norfolk and Radford Divisions of the Norfolk and Western Railway because of the merger of the two roads. The Organization contends that Carrier permitted Miss V. L. Gray to improperly cross seniority district lines in the establishment of a rest day relief position and thereby caused Claimant to lose work and pay to which he was entitled under Section 4 of said Agreement which reads as follows:

"Norfolk and Western Railway employes will not be permitted to exercise seniority bidding or displacement rights on former Virginian Railway vacancies or new positions until they have exhausted all rights on their original seniority district, after which they will be permitted to apply for former Virginian Railway vacancies or new positions under advertisement on the Virginian original seniority district with which their seniority dates have been dovetailed."

Both parties agree that Miss Gray had no seniority bidding or displacement rights on the Virginian. However, Carrier contends that there is precedent for its action in that earlier it allowed Claimant, whose seniority was on the Virginian, to include one day on the original Norfolk and Western.

We do not see how the alleged precedent justifies Carrier's failure to comply with Section 4. Certainly, if it were of such a nature as to be indicative of a past practice, and we do not hold that it is, the original Virginian District had no cause to complain -- it was gaining work. Further, Section 4 is clear and unambiguous and prior practices are not controlling. See Awards 5306 (Wyckoff); 6308 (Wenke); 7294 (Carter); 13940 (Dorsey); and 13994 (Dolnick).

Since Miss Gray had not exhausted all her rights on her original seniority district, it is clear that Carrier violated Section 4 in permitting her to cross the hereinbefore mentioned seniority district lines. The claim should be sustained.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1968.