Award No. 16529
Docket No. TE-15349

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Milton Friedman, Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

1. Carrier violated the Agreement, when it failed to permit J. E. Lee, regularly assigned relief Telegrapher, Waycross District, to move up on a temporary vacancy, as Agent-Telegrapher, Homerville, Georgia, account the incumbent agent at Homerville observing his vacation, and

2. Carrier shall be required to pay Claimant J. E. Lee, the amount of $103.32, which represents the additional compensation he would have earned on the temporary vacancy at Homerville, if Article 12 had been complied with.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective November 1, 1939, as amended and supplemented, is available to your Board and by this reference is hereby made a part of this submission.

The facts in this case are simple.

The date this dispute arose Claimant Lee was regularly assigned to a Relief position, as follows:

Work-week, Tuesday through Saturday, rest days Sunday and Monday.

Performed regular assigned relief service on the third shifts at Nahunta Tuesday, Folkston Wednesday, Waycross Yard Thursday, Moncrief Tower Friday, and the Agency position at Homerville Saturday.

On July 1, 1963, Claimant advised Chief Dispatcher J. M. Butler, by Company wire, of his desire to move up in the Homerville Office for the purpose of filling a temporary vacancy to be created by R. R. Brown, regular occupant of the Agency position, who was scheduled to go on vacation commencing August 12, 1963. See ORT Exhibit 1.

"(k) Seasonal positions of less than twelve months duration will be considered temporary positions. In filling temporary positions and temporary vacancies the oldest competent extra employe will be given preference, except that employes in any office will be given preference in filling temporary vacancies in that office. Any competent extra employe, not otherwise employed, may displace any younger extra employe, provided such younger extra employe has held the position five (5) days, and provided further that this does not necessitate an extra transfer of any agency by traveling auditor; when deadheading to or from such positions in the exercise of seniority no compensation will be allowed for time in transit.

* * * * *"

Inasmuch as there was no violation of any articles of the agreement, the claim was at all times declined.

The agreement of November 1, 1939, as amended, is controlling; the agreement is on file with this Division.

OPINION OF BOARD: Claimant was regularly assigned to a relief position covering five different offices on five different days, one of which was Homerville, Georgia. On July 1, 1963, he advised the Chief Dispatcher of his desire to move up in order to fill a temporary vacation vacancy at Homerville beginning August 12. On August 6 the request was denied on the ground that there was no qualified employe available to relieve Claimant.

During discussions on the property the Employes contended that Carrier violated Claimant's office seniority, which inured to him through Article 12(k) of the Agreement. In part, it provides:

"In filling positions and temporary vacancies the oldest competent extra employe will be given preference, except that employes in an office will be given preference, except that employes in an office will be given preference in filling temporary vacancies . . ."

On the property Carrier stated, in addition to its contention that no replacement was available, that Article 12(k) had never been intended to grant office seniority to such relief positions. By letter dated January 23, 1964, Carrier wrote to the Employes, in part:

"As pointed out to you in conference, Article 12(k) of the agreement was written long before the advent of the 40-hour week, when we had no such thing as a relief employe. It was never contemplated that an employe who performs relief work at five different offices would thereby acquire office seniority as contemplated by Article 12(k)."

The Employes replied that the Agreement was unambiguous. Also, in its rebuttal submission the Employes stated that Article 12(k) had been amended subsequent to the 40-hour week Agreement and no question had been raised by Carrier about relief employes.

The record is barren of any evidence on either side which supports its contention on the application to this situation of Article 12(k), whose relevant

words have been substantially unchanged since 1939. The Employes rest on the allegation that the provision unambiguously grants office seniority to Claimant, while Carrier argues that there was no contemplation that occupants of relief positions would acquire office seniority.

A provision incorporated in an Agreement at a time when there were no relief employes cannot be considered unambiguous with respect to them. What evidence is there that the occupant of a relief position was to have separate office seniority in up to five offices? Or in none? What has the past practice been with regard to this? Or has there been none? Such questions were unanswered beyond mere assertions by each side that its position reflected the intent of a provision which in essence had then been in existence for a quarter of a century.

Unless the Board is satisfied that evidence helpful in sound contract construction is non-existent or unobtainable, it should not decide a case solely by analyzing the bare bones of an Agreement's words whose applicability is unclear. The Employes as the moving party have the burden of proof and must either prove their interpretation of the Agreement's intent or establish that no extrinsic evidence at all exists. Pointing to the Agreement cannot sustain that burden when its import is not plain, and Carrier denies the Employes' interpretation.

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 Employes involved in this dispute are respectively Carrier and Employes 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 1st day of August 1968.

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