



Award No. 17159

Docket No. TE-16258

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(SUPPLEMENTAL)**

David H. Brown, Referee

**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION  
THE PENNSYLVANIA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Employees Union on the Pennsylvania Railroad, that:

Carrier violated the provisions of the Telegraphers' Agreement, effective March 19, 20, 23, 24, 25, 26, 27, 30, 31 and April 1, 1964, it blanked the agency station at Spencer, Indiana and requested the agent at Worthington to do part of the work during his regular tour of duty, part of the work on overtime and other portions of work transferred to other employees not covered by the Telegraphers' Agreement. F. L. Alexander, sub-agent, qualified and not used on the above dates at Spencer, shall be compensated any loss of earnings suffered as a result.

**EMPLOYEES' STATEMENT OF FACT:** Claimant, a Group 1 employee, was in terms of seniority the oldest of three substitute agents whose names were maintained on a list for the seniority district involved here. His regularly assigned position, for which he was compensated at the rate of \$425 per month, was located at Indianapolis, Indiana, and was covered by the terms of an Agreement between the Carrier and the Clerks' Organization.

From March 19, 1964, to May 5, 1964, the position of Agent at Spencer, Indiana, was temporarily vacant due to the illness of the regular incumbent. From March 19, 1964, to and including April 1, 1964, it was filled by a regular Relief Agent. The three positions just referred to were included in the Rate Schedule of the effective Agreement between the parties as follows:

**SOUTHWESTERN DIVISION**

| <b>LOCATION</b>                             | <b>TITLE</b> | <b>MONTHLY RATE<br/>OF PAY</b> |
|---|--------------|--------------------------------|
| (Former Indianapolis<br>Division Territory) |              |                                |
| Spencer, Ind.                               | Agent        | \$371.33                       |
| Worthington, Ind.                           | Agent        | 317.56                         |
| Lyons, Ind.                                 |              |                                |
| *Various                                    | Relief Agent | 307.77                         |

**OPINION OF BOARD:** The issue in this case is whether or not Claimant F. L. Alexander, who was Number One on the List of Substitute Agents, had a demand right to the work in controversy.

At all pertinent times Alexander, who was also a member of the Clerks' Organization, was exercising his seniority and occupying an assignment under the Clerks' Agreement.

The Organization takes the position that Carrier was obligated to move Alexander into the vacancy and that a contrary posture "would render Regulation 5-A-1(a) meaningless." Thus Employees rely on a broad interpretation of such rule, which reads:

"A list of persons to be known as substitute Agents shall be maintained in each seniority district. The number of persons on such list shall be consistent with the requirements of the service."

The only other rule support cited by Employees is whatever may be found in Regulation 1-A-1 reading:

"Assignment to positions subject to this Agreement shall be based on ability, fitness and seniority; ability and fitness being sufficient, seniority shall govern."

The crux of Employees' argument is that since Rule 5-A-1(a) requires that the number of persons on the list be consistent with the requirements of the service, the persons on such list are entitled to be used in preference to employees such as those to whom the instant work was assigned. They characterize 5-A-1(a) as mere surplusage in the absence of such an interpretation. They overlook the fact that specific provision for the use of substitute agents is found in Regulation 1-C-1(b):

"When a Group 1 position, or vacancy in such position, is advertised and no bids are received from qualified Group 1 employees, and no furloughed Group 1 employee is available for assignment to such position, the position shall be awarded to the senior qualified substitute Agent appearing on the list created under the provisions of Regulation 5-A-1."

We are of the opinion that the provision just quoted sets forth in full the circumstances under which a substitute agent becomes entitled to an assignment. In the instant case the vacancy was not advertised, nor did the rules so require. Under such facts, the essential condition precedent to an application of Regulation 1-C-1(b) was lacking. Such being the case, Substitute Agent F. L. Alexander cannot complain.

**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.

**A W A R D**

**Claim denied.**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division**

**ATTEST: S. H. Schulty  
Executive Secretary**

**Dated at Chicago, Illinois, this 20th day of May 1969.**