



Award Number 17601

Docket Number TE-17016

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Gladden, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Detroit, Toledo and Ironton Railroad, that:

1. Carrier violated and continues to violate the terms of an Agreement between the parties hereto when on Thursday, May 26, 1966 it assigned F. E. Hoody, an employee not coming within the Telegraphers' Agreement, to the position of agent, Toledo, Ohio.
2. Carrier shall, because of the violation set forth above, assign C. J. Boudreau, an employee within the scope of the Telegraphers' Agreement to the position of agent, Toledo, Ohio, and compensate him at the rate of \$562.14 per month, less any amount earned while employed by Carrier so long as the violation complained of continues.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the Detroit, Toledo and Ironton Railroad Company, hereinafter referred to as Carrier, and the employees designated therein, hereinafter referred to as Employees, represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegrapher), hereinafter referred to as Union, effective May 1, 1946, revised September 1, 1949, and as amended and supplemented, is available to your Board, and by this reference is made a part hereof.

At page 38 of said Agreement (Schedule of Positions and Rates of Pay) is listed for Toledo, Ohio the position of agent, prefixed by an asterisk. The listing, for ready reference, reads:

"Toledo *Agent \$329.16 Month Note A"

The agent's position at Toledo, as may be noted from the above listing, is subject to the provision of Note A. Note A reads:

"(A) The positions in this schedule marked with an asterisk (*) shall not be subject to the promotion, assignment, displacement and overtime rules and no person shall be entitled to acquire any such position by bid or by displacing another employee in the exercise of seniority and the monthly rate of pay herein provided is intended to compensate for all services performed. Notice of permanent vacancies in such positions shall be bulletined for the purpose of giving employees an opportunity to present their qualifications for

The position was assigned to Mr. Hoody, and he commenced his duties on June 1, 1966.

(Exhibits Not Reproduced)

OPINION OF BOARD: This Board has previously construed "Footnote A" of the Controlling Agreement relative to positions not subject to assignment thereunder in Award 15066 (Zack) contrary to the contention of the Organization.

The Organization, however, distinguishes Award 15066 in that the instant issue includes a question of "handling train orders". Reference is made to a May 1, 1957 agreement by the parties, the pertinent parts of which are as follows:

"Effective May 1, 1957,

Section (a)---No employe other than covered by this agreement and train dispatchers shall be permitted to handle train orders at telegraph or telephone stations where an agent or operator is employed and is available or can be promptly located . . ."

While the bulletin of the position in question included the words "train orders handled", there is, however, no showing in the record before the Board that train orders have been handled by persons contrary to the Section (a) of the May 1, 1957 Agreement quoted above.

Accordingly, the claim must be denied.

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 11th day of December 1969.