Award Number 17762
Docket Number TE-17581

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Norfolk & Western Railway Company (Virginia Lines), that:

1. Carrier violated all existing agreements when Telegrapher-Clerk C. F. Walthall, senior applicant on vacancy 2nd trick Blackstone, Virginia, as advertised 12:01 A.M., May 8, 1965, by Chief Dispatcher T. H. Hussey, was denied this position and 2nd trick Blackstone, Virginia was awarded to an employee junior to Mr. Walthall.

2. Carrier shall compensate Telegrapher-Clerk C. F. Walthall the actual rates and amounts as carried by the position 2nd trick Blackstone, Virginia, for each and every day he is denied this position. In addition, Carrier shall compensate Telegrapher-Clerk C. F. Walthall actual expenses for each and every day he is used to perform work on any other position, until this violation is corrected.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The issue involved here is predicated upon various provisions of the collective bargaining agreement between the Norfolk & Western—The Virginian Railway (now a part of the Norfolk & Western Railway Company, hereinafter referred to as Carrier, and the Transportation-Communication Employees Union, hereinafter referred to as Employees and/or Union, as amended and supplemented, effective date of February 16, 1958, and more specifically the Memorandum of Agreement between the parties dated August 31, 1960. These agreements are made available to your Board and by this reference are made a part hereof.

The dispute was handled in the usual manner on the property in accordance with the agreement provisions of the Railway Labor Act, up to and including the highest officer of the Carrier designated to handle claims and grievances, with conference, and disallowed.

The dispute arose when the Carrier refused to award a position on the Norfolk & Western Railway to a Virginian employee who had exhausted his rights on his original seniority district and, instead, awarded the position to a junior employee of the Norfolk & Western Railway Company.

the Order of Railroad Telegraphers effective September 16, 1960, relating to the seniority status of the employes in this craft on the former Virginian Railway Company and Norfolk and Western Railway Company, copy of which is attached for ready reference and identified as Carrier's Attachment "A". This Memorandum of Agreement is applicable to employes represented by the General Chairman of the former Virginian Railway Company and the General Chairman of the Norfolk and Western Railway Company. The former Virginian Agreement known as Telegraphers' Schedule of September 1, 1945, and the Norfolk and Western Agreement effective October 1, 1957, copies of which are on file with your Board are specifically referred to herein and made a part hereof.

These two separate schedule agreements are accompanied by dual representation under which one General Chairman continues to represent former Virginian employes and one General Chairman continues to represent Norfolk and Western employes.

The original seniority district of claimant in this case was on the Norfolk Division Seniority District of the former Virginian Railway Company in which district he established seniority on March 20, 1950.

On May 8, 1965, a vacancy was advertised for a second trick telegrapher position at Blackstone, Virginia (Norfolk Seniority District for Norfolk and Western employes). Only two bids were received, one from claimant and one from Telegrapher H. E. Woody, seniority date May 20, 1957, whose original seniority district was Norfolk Seniority District for Norfolk and Western employes. Prior to advertisement, claimant, who held a regular assignment on September 16, 1960, when the Memorandum Agreement became effective, later exercised his seniority to another position in his original seniority district and subsequently upon being displaced reverted to the extra list.

However, subsequent thereto and prior to the advertisement of the vacancy at Blackstone, Virginia, claimant's seniority entitled him to a regular assignment in his original seniority district at Chesapeake, Virginia, which he elected not to take and that position was awarded to a junior Telegrapher, J. L. Bradshaw, with seniority date February 9, 1955, on the Norfolk Division District roster of the former Virginian Railway.

(Exhibits Not Reproduced)

OPINION OF BOARD: The dispute herein involves the application of Section 3 of the Memorandum of Agreement dated August 31, 1960 to the facts in the instant matter. The issue can be stated as follows:

> "Were the seniority rights of the claimant exhausted at the time he sought to make application for the second trick position at Blackstone on May 17, 1965?"

Position of Employees: The Organization contends that the words in Section 3, to wit: "* * until they have exhausted all rights on their original seniority district, * * *" must be read to mean: "* * until they have exhausted all rights on a regular job on their original seniority district * *." The Employees therefore conclude that the Claimant's seniority rights were exhausted on July 4, 1964 when he was displaced by Telegrapher Dickerson from third trick leverman-telegrapher-clerk position at Jarratt, Virginia.

Position of the Carrier: It is the contention of the Carrier that the Claimant's seniority rights were not exhausted on July 4, 1964. In support thereof it points to the fact that Claimant, subsequent to being displaced

from his regular job and reverting to the extra board on July 4, 1964, had an opportunity to bid on a regular assignment in his original seniority district. Claimant chose not to bid upon the position and thereby did not exercise his seniority nor exhaust it.

It must be the conclusion of this Board that the language contained in Section 3 of the Memorandum Agreement dated August 31, 1960 is clear and lacking in ambiguity. Under these circumstances we cannot sustain the Employees' contention that the parties intended that Section 3 should have the meaning in accordance with the Employees' interpretation thereof. It must be recognized that if the signing parties had intended any different meaning than that which is clearly stated in Section 3, they would have utilized appropriate language and incorporated it into Section 3. The Board would be exceeding its authority if it were to accord a different meaning to Section 3 than that which is obvious and unmistakably set forth therein.

The burden is upon the moving party, the Employees, to show that the Claimant had exhausted all rights on his original seniority district before he is permitted to exercise seniority bidding on Nrrfolk and Western Railway vacancies or new positions. A careful examination of the record reveals that Employes have not sustained their burden of proving that Claimant's seniority rights were exhausted. 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 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 11th day of March 1970.

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