

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISIONAward No. 29885  
Docket No. CL-30708  
93-3-92-3-505

The Third Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Transportation Communications International  
(Union  
PARTIES TO DISPUTE: (  
(Union Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the  
Organization (GL-10833) that:

1. The Union Pacific Railroad Company violated the Rules Agreement effective May 16, 1981, when it awarded permanent position of Agent-Telegrapher at Weiser, Idaho to a junior employe thereby depriving senior employe B. L. Morrill the right to protect permanent assignment.
2. The Union Pacific Railroad Company shall be required to assign clerical employe B. L. Morrill to the permanent position of Agent-Telegrapher at Weiser, Idaho.
3. The Union Pacific Railroad Company shall be required to make Mr. B. L. Morrill whole for all lost wages and shall compensate Mr. Morrill the penalty allowances as provided for under Rule 11(e) of the currently effective Agreement."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At the time of this dispute, the Claimant was working as a Customer Service Representative at St. Louis, Missouri, with a seniority date of June 4, 1960. On February 1, 1991, the Carrier issued Clerical Vacancy Bulletin No. 2040026 advertising permanent position of Agent-Telegrapher 1(f) in the Superintendent Transportation Service-Train Operations Department at Weiser, Idaho, vacated by another employee who was assigned to a new position at Palma, Idaho. Five employees, including the Claimant, made application for the above position. On February 16, 1991, the Carrier awarded the position to an employee who is junior to the Claimant. On February 22, 1991, the Organization requested the Carrier to provide it with the reasons why the Claimant was not awarded the position. The Carrier responded on March 14, 1991, and stated in pertinent part:

"The assignment of J. D. Alderson was based on past work experience at the former Nampa Service Unit headquarters at Nampa, Idaho. Ms. Alderson has excellent knowledge of the customer area and operations of what is required in the Service Union concept. Experience in contacting various operational areas of the Union Pacific such as the NCSC and knowledge of this Service Unit's past operating functions were valuable in this choice of filling this position.

Ms. Alderson also has been noted as having excellent skills in dealing with people and with this in mind, felt she was most qualified to fill this vacated position."

At the outset of this dispute, the Organization argued the position at Weiser was improperly classified as a monthly-rated Rule 1(f-1) position entitled Agent-Telegrapher because that position is not listed among those positions subject to the bulletin and assignment rules of the Agreement. The Organization believed the Weiser position should be converted to a classification of 1(a) and subject to all the Rules of the Agreement. The Carrier countered asserting the monthly rate, as well as past practice, shows this position is that of an Agent.

Notwithstanding the disagreement over the proper classification, the record supports a sustaining award even under the Carrier's theory that the position is that of a Rule 1(f-1) Agent. Monthly rated positions classified as Agent-Telegrapher are bulletined and assigned in accordance with the Bulletin and Assignment Rules:

"...all other monthly rated positions included in this Section (f) shall be bulletined and applications considered on the basis of qualifications. Applicants must be approved by the General Manager and Traffic Department. Where qualifications are sufficient, seniority shall govern." [Rule 1(f)]

The evidence of record establishes the Carrier conceded the critical question of whether or not the Claimant was qualified when, on September 5, 1991, it offered, in writing, to allow the Claimant displacement rights based on "Mr. Morrill's qualifications...." This admission was reaffirmed by letter of September 27, 1991. Ordinarily, compromise offers, such as contained in the Carrier's September 5 and 27, 1991, correspondence do not come before this Board. Herein, however, those documents are part of the record, and the admissions contained therein cannot be overlooked.

The claim is sustained, but the liability of the Carrier ends on September 27, 1991, which is the date the Carrier offered without condition to allow the Claimant the right to displace onto the Agents's position at Weiser, Idaho, as well as paying him a differential in wages. It is further ordered that the Claimant shall be allowed displacement onto the Weiser Agent's position if he should so choose.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest: Catherine Loughrin  
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 26th day of October 1993.