

SPECIAL BOARD OF ADJUSTMENT NO. 506

THE ORDER OF RAILROAD TELEGRAPHERS

vs.

MISSOURI PACIFIC RAILROAD COMPANY

Roy R. Ray, Referee

STATEMENT OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad, that:

1. Carrier violated Rules 17, 18 and Paragraph (B) of Memorandum of Agreement dated December 1, 1959 in lieu of Rule 37 of the Telegraphers' Agreement when, on the 27th day of November, 1961, it arbitrarily and unilaterally assigned junior employee C. R. Hayes to the star-agent-telegrapher position at Jacksonville, Texas, denying senior applicant W. S. Ingram the exercise of seniority rights.
2. Carrier shall compensate Agent-Telegrapher W. S. Ingram the difference in pay between the star-agent-telegrapher position at Jacksonville, Texas, rate of \$22.12 per day (six days per week basis), and the Franklin, Texas rate of \$19.58 per day (five days per week basis), and the difference on any other position Mr. Ingram may perform services to that of the Jacksonville Agency beginning on the 27th day of November, 1961, and continuing thereafter as long as Carrier refuses to permit Mr. Ingram to exercise his seniority rights on the position at Jacksonville, Texas."

OPINION OF BOARD:

On October 26, 1961, Carrier bulletined the position of Star-Agent-Telegrapher at Jacksonville, Texas. Fourteen persons applied for the position. The Claimant stood first on the seniority list with a seniority date of March 7, 1929. From these fourteen applicants Carrier's Superintendent and General Agent selected three and recommended them to the General Manager and Traffic Manager in, 1, 2, 3 order. C. R. Hayes was first choice, W. T. Ray, second choice and V. L. Smith, third choice. The recommendation of the Division Officers was approved and on November 27, 1961, Hayes was assigned to the position. He stood fifth on the seniority list with a seniority date of February 27, 1937. At the time Claimant was Agent-Telegrapher (Temporary) at Franklin and Regular Agent-Telegrapher at Jewett. Hayes was Temporary Agent-Telegrapher at Jacksonville, and Regular Swing Telegrapher at Jacksonville-Troup.

The Employes filed the present claim charging that in assigning a junior employee to the position Carrier had violated the seniority rights of Claimant. The claim was denied by Carrier at all stages and is properly before this Board.

The Employes contend that Carrier's action violated Rules 17, 18 of the Agreement and also Rule 37(b) as modified by the Memorandum of Agreement of December 1, 1959. They assert that Claimant was well qualified for the position and that the Company did not give any consideration to his seniority as shown by the Superintendent's letter of December 18, 1961, in which he said:

"Since Jacksonville is a star agency, assignment can be made without respect to seniority; therefore I see no violation of Agreement. Your request for reassignment of the position is respectfully declined."

Carrier contends that appointments to star agency positions are controlled by Rule 37(b) which provides that such positions are to be filled jointly by the Operating and Traffic Departments and under which seniority prevails only where the qualifications are equal.

It says that Rules 17 and 18 are general seniority rules and are inapplicable to the Star Agency positions by virtue of the express provisions of Rule 1(b) which says that assignments to star agencies shall be made in accordance with Rule 37(b). It says that in this case, the Superintendent and General Agent determined that Hayes and the other two men were more qualified than Claimant for the position and made the recommendation to the General Manager and Traffic Manager on that basis. So seniority did not come into the picture because the men did not consider Claimant as well qualified as Hayes.

Rule 1(b) says: "Positions covered by this Agreement will be filled from the official seniority list, applicable to employees incorporated in this Agreement and the employees so assigned will be considered regularly employed. This section shall not apply to Star Agencies as indicated under Rule 37 of this Agreement, their assignments to be made in line with paragraph (b) of the rule mentioned." (Emphasis added.) Rule 37(b) is a special rule dealing with the filling of Star Agency positions. It says in part: "Positions marked with a (*) are to be filled jointly by the Operating and Traffic Departments from the ranks of employees covered by the Agreement in the employ of the Carrier who have accumulated one year or more of seniority under this agreement and except as hereinafter provided applications will be considered according to ability and where qualifications are equal, seniority will prevail." (Emphasis added.)

Only applicants of one or more years seniority will be considered but it will be seen that the first consideration is on the basis of ability. If Employee A is clearly the best qualified in the opinion of the Operating and Traffic Departments, he is entitled to the job. If some other applicant is equally as well qualified, then and only then does seniority come into the picture, in which event it is controlling.

It is well to note here the difference in wording between 37(b), which says "Where qualifications are equal, seniority will prevail.", and that of Rule 17, which says "Employees shall be regarded as in line for promotion and where qualifications are sufficient, seniority will prevail". In all of the Awards relied upon by Employees except one the language involved was like that of Rule 17 to the effect that where qualifications are sufficient or where fitness and ability are sufficient, seniority shall prevail. In most of them the Board held that where Claimant was qualified, the Carrier was not entitled to compare qualifications, and award the job to a junior man better qualified. In some of them the Board found favoritism on the part of Carrier. None of these Awards are applicable here where the wording of 37(b) is: "Where qualifications are equal, seniority will prevail." (Emphasis added.)

In Award 44, relied upon by Employees, the language of the Agreement was "Where the qualifications are equal seniority will prevail." The decision of the Board in that early case was that under the peculiar circumstances, Claimant should be given a chance to see if he could do the job. We do not believe that Rule 37(b) contemplates that the person is to be assigned to the job on a trial basis, and we therefore feel that Award 44 is not persuasive.

We must reach a decision here not on the basis of whether Claimant had sufficient qualifications but on whether his qualifications were equal to those of Hayes. While the Employees have shown that certain Carrier officials regarded Claimant as qualified, they have failed to show that he was equally as well qualified as Hayes. The right to determine qualifications of employees rests with management and, in the absence of a showing that Carrier's action was arbitrary and in bad faith, we would not be justified in overturning its judgment. If, however, we were convinced that Carrier acted capriciously and gave no consideration to Claimant's qualifications, we would not hesitate to sustain the claim. But we find nothing in the record to indicate that Claimant's qualifications were not considered along with the other thirteen applicants in the selection of the three men recommended to the General Manager and Traffic Manager. Carrier states that the records and experience of all 14 were considered by the Superintendent and General Agent in formulating their recommendation and the Employees do not successfully rebut this fact.

For the reasons stated, we conclude that no seniority rights of Claimant were violated by Carrier.

FINDINGS: The Agreement was not violated.

A W A R D

Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 506

/s/ Roy R. Ray
Roy R. Ray - Chairman

/s/ D. A. Bobo
D. A. Bobo - Employe Member

/s/ G. W. Johnson
G. W. Johnson - Carrier Member

St. Louis, Missouri
July 29, 1963
File 279-265