

SPECIAL BOARD OF ADJUSTMENT NO. 506

THE ORDER OF RAILROAD TELEGRAPHERS

vs.

MISSOURI PACIFIC RAILROAD COMPANY

Roy R. Ray, Referee

AWARD NO. 6

DOCKET NO. 6

ORT. CASE 3509

STATEMENT OF CLAIM:

Claim of the General Committee of The Order of Railroad Telegraphers on the Mo. Pacific Railroad Company (Gulf District), that:

Telegraphers E.J.Richard, J.D.Dugas, L.J.Bienvenue, and R.D.Strong and any other employe adversely affected, be compensated in accordance with the pay difference between the Orange, Texas, Star-Agent-Telegraphers' position and the positions they were forced to work between Feb. 1, 1961 through and including Feb. 28, 1961, and any and all expenses incurred thereto account Carrier denied the four, mentioned above, employes the exercise of seniority rights in accordance with Rule 25 (d) of The Telegraphers' Agreement. In addition thereto Carrier violated Sections 1 and 7 of the Railway Labor Act, Amended, due to Supt. F.E.Fletcher changed the working conditions of the Telegraphers' Agreement by not conforming to said Act in respect to Rule 38 of said Agreement. The Telegraphers' Agreement has established by custom, usage and precedent the privileges embodied in Rule 25 (d) of said Agreement.

OPINION OF BOARD:

Orange, Texas, is a star (*) agency. The regular occupant of the Agent-Telegr. position at Orange, V.B.Dorrell, was scheduled to go on his vacation on Feb. 1, 1961, and did so. On Jan. 30th, Extra Telegr. L.J.Bienvenue, wired the Supt. requesting permission to fill the position at Orange. Carrier, however, placed Extra Telegr. C.H.Bartlett in the position. Bienvenue then went to work at another station. Being displaced there by a senior employe, on Feb. 7th, he wired the Supt. requesting permission to displace Bartlett. This request was denied. In replying to the Local Chairman's letter of Feb. 10, 1961, the Supt. stated (letter of Feb. 23rd) that the position was covered by Rule 37 and that Carrier did not consider Bienvenue qualified for the star agency position. Employes say that between Feb. 10th and 20th, three other extra telegraphers, i.e. R.D.Strong, J.D.Dugas and E.J.Richard requested permission to displace Bartlett and that permission was denied to Strong and Richard with no reply being received by Dugas. Carrier claims that it has no record of such requests. It is undisputed that all four of the Claimants had seniority dates older than that of Bartlett.

Employes contend that Bienvenue, Richard, Dugas and Strong were all qualified for the position at Orange and were entitled to displace Bartlett, but that Carrier arbitrarily refused to allow them to displace Bartlett, a junior employe, whom Carrier placed in the position. In progressing their claim on the property Employes relied upon Rule 25(d). In their present submission they have also claimed that under Rule 37 Claimants were entitled to the position.

Carrier contends that the claim, as originally filed, failed to name the claimants, referring only to "all employes adversely affected" and therefore failed to comply with the provisions of Article V 1(a) rendering it invalid; that Rule 25 (d) is a general rule pertaining entirely to extra employes and has no application to this case; that the position involved was a vacation relief and under Article 12 (b) of the Vacation Agreement is not considered a vacancy under any Agreement, and only requires "an effort to observe the principle of seniority"; and that occupants of star agency positions are not subject to displacement, being governed by Rule 37 (b) of the Agreement under which seniority applies only where qualifications are equal.

In our view Carrier's point that the claim is invalid because it failed to name the claimants is without merit. This point was not raised on the property. Furthermore, Awards of the Third Division hold that claimants need not be specifically named so long as they are easily and clearly identifiable. Awards 8526, 9248, 9333, 9353, 10229, 10238, and 10533. In this case, by letter of March 13th, before the claim was filed, the Gen. Chairman had informed the Supt. of names of three claimants. The claim, as filed, was denied only on the ground that Rule 37 applied. When appealed on April 3rd, all four claimants were named.

Turning to the merits, we hold Carrier's position well taken and find no basis for sustaining the claim. The important thing here is that this was a star agency position and assignment to these positions is controlled by Rule 37 (b). Such positions whether permanent or temporary are to be filled in accordance with the provisions of that Rule. It is apparent that seniority is not the sole criteria. See our opinion in Award 2 of this Special Board. The first consideration is ability and both Traffic and Operating Departments must pass on this. It necessarily follows that star agency positions are not subject to displacement, otherwise the provisions of Rule 37 would be meaningless. In this case, Carrier determined Bartlett to be the best qualified man for the job and the Supt.'s letter indicated this. The Employees have failed to show that any of the Claimants were as well qualified as Bartlett or that Carrier's action was based in any way on prejudice or favoritism. We can find no basis for overturning it.

FINDINGS: That there was no violation of the Agreement.

AWARD

Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 506

s/ Roy R. Ray
Roy R. Ray, Chairman

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

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

St. Louis, Missouri
July 29, 1963
File 279-153