Award Number 221
Docket Number TE-158

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Lloyd K. Garrison, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
ST. LOUIS, SAN FRANCISCO AND TEXAS RAILWAY COMPANY
FORT WORTH AND RIO GRANDE RAILWAY COMPANY
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE.—

"Claim of the General Committee that the Telegraphers' Schedule covering employees in station, tower, and communications service on St. Louis-San Francisco Railway, St. Louis, San Francisco and Texas Railway Company and Fort Worth and Rio Grande Railway Company, be extended to cover such employees on the Seymour Sub-Division of the St. Louis, San Francisco and Texas Railway Company as of July 1, 1930."

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

The carriers and the employees involved in this dispute are respectively carriers and employees 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.

The parties to said dispute were given due notice of hearing thereon.

As a result of a deadlock, Lloyd K. Garrison was called in as Referee to sit with the Division as a member thereof.

An agreement is in effect between the parties bearing date of May 16, 1928.

Shortly prior to June 30, 1930 the St. Louis-San Francisco Railway Company (hereinafter called the Frisco) acquired all of the stock and bonds of the Gulf, Texas, and Western Railway (hereinafter called the G. T. & W.). On June 30, 1930, the St. Louis, San Francisco and Texas Railway Company (hereinafter called the Frisco-Texas) leased for fifty years the property of the G. T. & W., designating its line, which was approximately 98.6 miles long, as the Seymour subdivision of the Frisco-Texas. The G. T. & W. maintained and still maintains its separate corporate existence with its own independent board of directors, but one of the superintendents of the Frisco-Texas is in charge of the operations on the G. T. & W. line, and the line is unquestionably operated as a part of the general system of the various Frisco lines. There is no physical connection between the line of the G. T. & W. and the Frisco-Texas lines, although it was contemplated when the acquisition was approved by the Interstate Commerce Commission that the connection would be made and no doubt it will be made when conditions warrant. On the other hand, there is no physical connection between the lines of the Frisco and the Frisco-Texas, or between the lines of the Frisco-Texas and the Fort Worth and Rio Grande Railway Company (hereinafter called the Fort Worth).

Under these circumstances the petitioners contend that the agreement between the parties automatically extended over the G. T. & W. line upon its lease to the Frisco-Texas and its designation as the Seymour subdivision of the former. The contention rests upon the preamble to the agreement, to the effect that the agreement will govern the employees described in Article I

"upon the lines of" the Frisco, the Frisco-Texas, the Fort Worth, and the Brownwood North & South Railway Company (hereinafter called the Brownwood). The question narrows down to whether on and after July 1, 1930, the G. T. & W. was a line of the Frisco-Texas within the meaning and the contemplation of the agreement. In ordinary terminology the G. T. & W. doubtless became a line of the Frisco-Texas. But the question is whether it became a line of the Frisco-Texas within the meaning and the contemplation of the agreement. This requires an examination of the agreement as a whole. The case is a close one and the question is not easy of solution, but we feel it should be answered in the negative for the following reasons:

First, the agreement lists in an appended wage scale the wage rates of the several positions at each of the stations of the four railway companies who are enumerated in the preamble and who are parties to the agreement. Were it not for the minimum rate provisions in Article XII, the itemized wage schedule would indicate that if any new line were acquired the agreement could be extended to cover it only by negotiation covering among other things the rates to be fixed at the new stations. We may fairly ask, however, whether the minimum rate provisions were inserted for the purpose of enabling the agreement to be automatically extended to a new line, or for some other purpose. No certain answer can be given, but from a reading of the agreement as a whole the most natural interpretation of the minimum rate provisions is that they serve the following purposes: (a) To cover the contingency of a position in the appended wage scale being changed to another classification, as by the conversion of an agent-telegrapher's or an agent-telephoner's position into an exclusive station agency position, in which case, as provided in paragraph (7) of Article XII, the hourly rate would be adjusted at not less than the minimum hourly rate for agents. (b) To cover the contingency of an additional position not mentioned in the appended wage scale being created here and there at particular stations. Thus it is provided in paragraph (8) of Article XII that "when additional positions are created the hourly rate will be fixed to correspond with the importance of the position and other conditions, including wages paid by the company for similar positions in the same territory, but in no case less than the hourly rate provided for such positions. . . ." By one construction the reference to the creation of additional positions might be held to contemplate all of the positions in the stations of a subsequently leased line, but we think the more natural construction is that the reference was intended to cover additional positions created in existing stations or in newly created stations on the lines originally covered by the agreement. One would not naturally speak of the positions on the G. T. & W. line as additional positions "created" by the management, but would speak of them rather as additional positions previously existing and later by acquisition brought into the system.

We do not wish, however, to labor this argument and would be unwilling to rest the case upon it in the absence of any other indications of what was contemplated by the agreement. We cite it merely as a slight but not controlling indication of the probability that the parties did not draft the agreement with the leasing of additional lines in contemplation.

Second. On or about December 1, 1925, the Frisco acquired the stock of the Muscle Shoals, Birmingham & Pensacola R. R. (hereinafter called the M. S. B. & P.), leased its line, and took over its operation. The telegraphers' agreement was extended to cover this line when the line was physically connected with the Frisco system and through trains began operation on August 1, 1928. It is true that until this physical connection was made the line was not designated as a subdivision of the Frisco and until so designated was not placed under the jurisdiction of the superintendent of the southern division of the Frisco. The employes distinguish this case from the one now before the Board by pointing out that in the present case the operations on the G. T. & W. were from the beginning of the lease under the jurisdiction of a superintendent of the Frisco-Texas and that at the same time the G. T. & W. was designated as a subdivision of the Frisco-Texas. But these seem to us to be matters of form and not substance. Upon the acquisition of the M. S. B. & P., numerous officers and officials of the Frisco became officers and officials of the M. S. B. & P. and the control over the employees and affairs of the M. S. B. & P. by the Frisco was as a result of the lease and the stock ownership, just as absolute at the beginning as it was later when the Pensacola subdivision was formally an-

nounced. The extension of the agreement to the M. S. B. & P. line by the carrier some three years after its acquisition is at least some indication that the parties did not understand the agreement as applying automatically upon the acquisition of any line and its operation in substance as a part of the Frisco system.

Third. As has been stated, the agreement in question is between the employees and the Frisco, the Frisco-Texas, the Fort Worth, and the Brownwood, each of which companies is separately specified as a party to the agreement. The agreement states that it covers the lines of the Frisco, the Frisco-Texas, the Fort Worth, and the Brownwood. At the time the agreement was entered into the Frisco owned the stock of the three other lines as it now owns the stock of the G. T. & W. The Frisco-Texas operated under lease the lines of the Brownwood and the Fort Worth, as it now operates under lease the lines of the G. T. & W. If it were appropriate to treat the G. T. & W. as a line of the Frisco-Texas, within the meaning of the agreement, it would have been appropriate to have treated the Brownwood and the Fort Worth, for purposes of the agreement, as lines of the Frisco-Texas. The agreement, in other words, if it had meant to include every line then or thereafter leased by the Frisco-Texas, would not have had to mention either the Fort Worth or the Brownwood, but could have included them simply under the single term "lines of the Frisco-Texas." The agreement did not do this. It made the Brownwood and the Fort Worth parties to the agreement and it specified the line of the Brownwood and the line of the Fort Worth as coming under the agreement, as though each of these lines, though leased and operated by the Frisco-Texas, was, nevertheless, for the purpose of the agreement, something different from the line of the Frisco-Texas. And since the Brownwood and the Fort Worth, both leased and operated by the Frisco-Texas, are not referred to as lines of the Frisco-Texas but are brought under the agreement by specific reference, it would seem to follow that the reference in the agreement to the line of the Frisco-Texas meant only that line which was directly owned by that Company and did not include other lines not owned by the Frisco-Texas but simply operated by it under lease. If so, the G. T. & W. would not now be a line of the Frisco-Texas within the meaning of the agreement.

Each of the three considerations we have mentioned indicates that the agreement was not expected to apply automatically to any new line leased by the Frisco-Texas. Neither consideration standing alone might be controlling. All three of them taken together in the absence of any other evidence to the contrary leads to a conclusion in favor of the Carrier's contention.

AWARD

Claim denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON, *Secretary.*

Dated at Chicago, Illinois, this 26th day of March 1936.