Award No. 4677
Docket No. TE-4539

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Lines.

(a) That the Carrier on July 22, 1948, established a new agency station known as Morfa, Texas on the Wichita Falls and Northwestern District with three telegraphers and 9 clerks and refused and continues to refuse to establish an agent at Morfa, thereby violating the Telegraphers' Agreement, Rule 1, Rule 6 and Rule 7, effective September 1, 1947.

(b) That the Carrier shall be required to establish an agency position at Morfa as provided in Rule 1, Rule 6 and Rule 7 of the current Telegraphers' Agreement, and the agency position shall be bulletined and assigned in accordance with Rule 2 of the Telegraphers' Agreement.

(c) That so long as the work and duties of an agent exists at Morfa the Carrier shall be required to pay the rate as provided under Rule 6 from the date the agency was created and the successful applicant assigned to the position paid retroactive to July 22, 1948.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing date of September 1, 1947, as to rules and working conditions, and rates of pay is in effect between the parties to the dispute.

The Scope Rule of said Agreement, as adopted, reads as follows:

Rule 1

EMPLOYES INCLUDED

"(a) These rules and working conditions will apply to Agents, Freight Agents or Ticket Agents, Agent Telegrapher, Agent Telephoners, Relief Agent, Assistant Agents, where they have charge of station, take the place of or perform the work of an Agent, Telegrapher, Telephone Operators, (except Switchboard Operators), Towermen, Levermen, Tower and Train Director, Block Operators, Staffmen, Operators of mechanical telegraph machines, used for receiving and transmitting messages, Manager Wire Chiefs, Wire Chief Telegraphers, and Car Distributors where the position requires knowledge of the duties of a Telegrapher or the handling of messages by telephone (synonymous terms), all of whom are hereafter referred to as employes."

The facts and evidence in this case, therefore, definitely and unmistakably show that a new agency known as Morfa, Texas, has not been established and Rule 1, Rule 6 and Rule 7 of the Telegraphers' Agreement, effective September 1, 1947, have not been violated, as alleged by the Petitioner, and this claim should, therefore, be denied.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

(Exhibits not reproduced.)

OPINION OF BOARD: About 2.6 miles east of Wichita Falls, Texas, loading racks were constructed by several companies on privately owned property adjacent to Carrier's tracks for use in loading and shipment of crude oil, and they were connected by switch with Carrier's railroad. The train yard or "North Yard" was located 1.4 miles west of Wichita Falls. Carrier extended its yard limits to include this new loading point and constructed there auxiliary yard tracks with crossings, and a yard and telegraph office. Both loaded and empty cars for the outbound carload oil shipments were switched in and out of trains by yard engines at the yard adjacent to these loading racks instead of at the main or North Yard. This new office and yard was designated as Morfa. Its sole function was the handling of oil shipments from the private loading racks until the completion of pipe lines there under construction. The Carrier assigned there one telegrapher on each shift and three clerks on each shift. Traffic was handled under the Chief of Dispatcher, Freight Agent and Yardmaster at Wichita Falls, and the accounts by the Wichita Falls Agent. Carrier maintained separate telegraph offices and forces at the North Yard, also under the Wichita Falls agency.

The Committee says, "It is our position that the number of employes established and the amount of revenue earned creates a new position for an agent under the Telegraphers' Agreement, Rules 1, 6 and 7. * * * The Carrier in this instance, has combined the Agency at Wichita Falls, Texas and the Agency work at Morfa by instituting an auxiliary service, which is not in accord with the prevailing Agreement."

We can find nothing in the rules to prevent Carrier from establishing an auxiliary telegraph office and yard within the yard switching limits and under the supervision and through the accounts of an existing agency. Certainly the number of employes or the amount of revenue would not be controlling, in any event. There is no evidence submitted showing that the Chief Clerk at Morfa is performing duties of an agent.

The Committee further says that "the Carrier has created a new position under the guise of an Assistant Superintendent" and that "his duties are that of an agent as contact representative between the Carrier and the Shell Oil Company and at least 95% of his entire time is spent at Morfa station. All communications, all orders, and the entire supervising of this station is under this new position of Assistant Superintendent." But the Committee also says, after listing the positions established at Morfa,—"Above forces, except telegrapher-clerks, were placed under the supervision of supervising agent, Wichita Falls, Texas. Telegrapher-Clerks are under the supervision of the Chief Dispatcher".

Assistant Superintendents have supervision over all subordinate employes in their district, and we find nothing in the Agreement to suggest that the Carrier's contact man with a great oil company at an important shipping point must be an agent.

We think the claimant has failed to show that an independent Station has been established at Morfa as claimed, or that the work of an agency is being there carried on.

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

That both parties to this dispute waived oral hearing thereon;

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 Carrier has not violated the Agreement.

AWARD

Claims (a), (b), (c) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 19th day of January, 1950.