

Award No. 5641
Docket No. TE-5616

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, on St. Louis Southwestern Railway Company of Texas, that:

(a) The Carrier violated and continues to violate the terms of the prevailing agreement between the parties when, on July 31, 1949, acting alone, it arbitrarily declared abolished the position of agent-telegrapher at Lavon, Texas, a position covered by said agreement between the parties, without in fact abolishing any of the work of the position, and that

(b) The Carrier further violated and continues to violate the agreement between the parties when, under date of August 1, 1949, it ignored the representatives of the employees, party to the agreement, and arbitrarily changed the working conditions, duties and responsibilities, of the agent-telegrapher at Wylie, Texas, and substituted, by ex parte action, one joint agency position in lieu of the two agency positions called for in the agreement, by requiring said agent-telegrapher at Wylie to suspend work during regular hours in order to make daily trips to Lavon and Yakimo for the purpose of performing agency work there, which work prior to August 1, 1949, was attached to the position of agent-telegrapher at Lavon; belonged to and was being performed by the incumbent of the Lavon position at the time Carrier allegedly abolished that position, and that

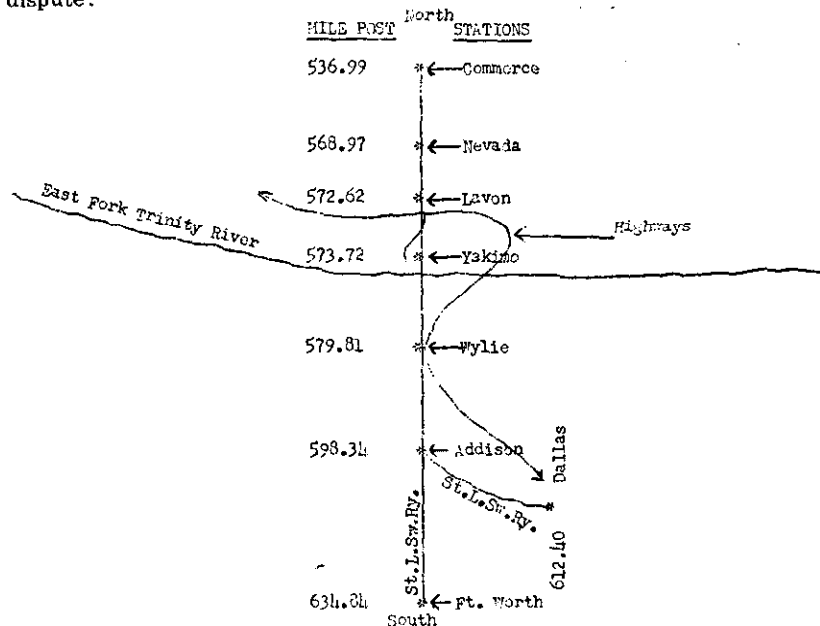
(c) The Carrier further violated the agreement and the principles of collective bargaining when it entered into an ex parte, or individual, agreement to pay the Wylie agent-telegrapher six (6) cents per mile for the use of his automobile in going to and returning from these outside stations, and that

(d) The Carrier shall be required to discontinue violating the agreement and restore the Lavon agent-telegrapher position and advertise it for bids pursuant to Article 13-1 of the agreement and continue such position in effect so long as the work of the position remains to be performed, and

(e) That, as a result of its violative actions, the Carrier shall be required to pay a day's pay, in accordance with the rules of the agreement, at the Lavon agent-telegrapher rate of pay, to the senior idle employee, extra

in preference, covering each and every day its arbitrary violative arrangements have been in effect and continuing each day until the Lavon position is restored and/or such violative practices are discontinued.

EMPLOYEES' STATEMENT OF FACTS: As a preliminary to our statement of facts, and in order that your Board might have a better insight into the physical characteristics surrounding the location where the herein complained of violations occurred, there follows a rough sketch designed to depict a portion of the Dallas sub-division, Commerce to Dallas, and the Ft. Worth sub-division, Addison to Ft. Worth, of the Carrier's Texas lines; the East Fork Trinity River at Yakimo, and the automobile highway between Wylie, Lavon and Yakimo, the three stations principally involved in this dispute:



Prior to August 1, 1949, there existed at Lavon, Texas, a position of agent-telegrapher covered by the agreement between the parties and listed in the wage scale thereof, with assigned hours 6:00 P. M. until 3:00 A. M.

The duties and responsibilities of the agent-telegrapher at Lavon consisted of the performance of the necessary telegraphic and telephonic communications service, such as the handling of train orders; OS-ing (reporting) trains; sending and receiving messages, line-ups, and other communications of record, and the performance of all agency work incident to such a one-man agency station. In addition, his duties and responsibilities also included the handling of all business accruing to Yakimo, a non-agency station, or blind siding, located 1.09 miles South of Lavon, which station was created and established during the month of June, 1949, or thereabout, for the purpose of handling carload shipments of material for use in the construction of a dam on East Fork Trinity River at that location; a project reported to require some three or more years to complete. Such additional duties included the taking into account of all waybills covering freight destined Yakimo; checking the yard and keeping the demurrage account; billing empty ballast cars back to the quarry; keeping all records and making all reports incident to the handling of such business.

Effective with the close of work July 31, 1949, the Carrier, without negotiation or agreement with the duly accredited representatives of the

write a new rule, which of course is not a function of the Board. There is no basis for the claim and the Carrier respectfully submits that it should be denied.

Without prejudice to its position that the claim is not valid in any respect, the Carrier submits that in no event could the claim be valid for restoration of the position of agent-telegrapher at Lavon. The Carrier has the right to determine what positions are required to perform the work. If there were a violation of the rules in the manner in which any work is being performed (which the Carrier denies) the method of correcting would be a matter to be determined by the Carrier. This is supported by Award 4698, in which the Opinion of Board reads in part as follows (Referee Robertson):

“* * * this Board has held, and rightly so, that it will not direct the establishment of positions. How the Carrier cures a violation of an agreement is a matter for its discretion.”

All data herein has been presented to the representatives of the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective July 31 1949 the Carrier abolished the position of agent-telegrapher at Lavon and concurrently the hours of assignment of the agent-telegrapher at Nevada were changed to permit handling telegraph service formerly handled at Lavon and certain work at Yakimo was reassigned from the agent-telegrapher position at Lavon to the agent-telegrapher position at Wylie.

The railroad facilities at Lavon (population 200) are a station building and a freight shed, with a passing track and a shed track. The adjoining station 4 miles north is Nevada (population 386); and the adjoining station 7 miles south is Wylie (population 914).

During the last two months the position existed at Lavon, the agent-telegrapher handled the accounts for business received at an industry track Yakimo, 1.09 miles south of Lavon, built for a contractor engaged in constructing a dam. Operations on this track ceased September 24, 1950.

The agent-telegrapher at Lavon did not handle passenger business and no passenger trains stopped except on flag. For the last 7 months the position existed, the total freight receipts were:

Less than carload.....	\$ 13.55
Carload (15 cars).....	1,559.40

The 15 cars (onions) all moved in June; and July, the last month the position was maintained, the freight revenue was 85¢.

The position was apparently maintained primarily to provide an open telegraph office for handling train orders at night between two stations 40 miles apart where continuous telegraph service was maintained. Lavon and Nevada are near the center of this 40-mile district and neither would serve equally well as to location. Lavon had been used for this purpose, handling an average of 4.8 train orders per day. When the position was abolished, the assignment at Nevada was changed to cover the period during which such telegraph service was required.

The is conflict in the record whether, since the position was abolished, trainmen have been required to report arrival at Lavon to the train dispatcher, to secure lineups and to copy train orders and report the “yard situation” at Lavon. Lavon was not a junction point, nor a yard and there was no reason for crews to report their arrival; and, after the position was abolished, lineups and train orders were received at Nevada which was only 4 miles distant. While unusual conditions, such as might arise at any blind siding, may have occurred (see Award 4259), the record fails to establish violations of the Agreement by the use of trainmen as above claimed.

There is also conflict in the record as to what additional work was performed by the agent-telegrapher at Wylie as a result of the abolishment of the agent-telegrapher position at Lavon. Whether the agent-telegrapher at Wylie performed any work at Lavon itself, being in dispute, was made the subject of a joint check which was signed without dissent and which we accept. The joint check showed that the agent-telegrapher at Wylie performed no work at Lavon except to check cotton and seal cars on 37 days between August 1, 1949 and March 1, 1950.

It appears that the agent-telegrapher at Wylie did check the industry tracks daily at Yakimo to determine when cars were made empty: the fact is not in dispute but the status of this work under the Agreement is. The Brotherhood makes a number of different and not altogether consistent contentions with respect to the status of Yakimo, the principle one being that the duties of the agent-telegrapher at Wylie are confined to the yard and city limits of Wylie by reason of the advertisement of the position as "Agent-Telegrapher, Wylie."

A specification of location in a bulletin is not necessarily a job description: its primary purpose is to fix the point where the employe will report and go off duty (compare Award 5640). It is clear that a violation of the Agreement would ensue if the agent-telegrapher were called upon to perform work at two stations (Award 388, 3659, 4042, 4576, 4698, 4972, 5357, 5365, 5384, 5507 and 5515). But Yakimo was not an agency or a station and never was one. No "joint agency" was created when the minor temporary function was assigned to Wylie any more than one was created when it was assigned to Lavon (Award 1670).

The record as a whole does not justify a conclusion that the position of agent-telegrapher at Lavon was abolished in violation of the Agreement (Awards 439, 3838, 4001, 4099, 4065, 4849, 4446 and 5318). Paragraphs (a) (b) (c) and (d) of the claim should be denied (see Awards 4698, 5375, 5384, 5507 and 5515). Paragraph (e) of the claim should be sustained to the extent of the 37 days checking cotton and sealing cars at Lavon at the pro-rata rate.

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 the Agreement was violated as above found.

AWARD

Claim denied as to paragraphs (a) (b) (c) and (d) and sustained as to paragraph (e) to the extent specified in the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 8th day of February, 1952.