Award No. 5655
Docket No. TE-5678

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Lines in Texas and Louisiana, that:

(a) The Carrier violated the terms and provisions of the Agreement between the parties, dated October 15, 1940, when it required or permitted an employe not covered by the Scope of the agreement to perform work covered by said Agreement.

(b) The agency at Laureles, Texas, was not actually closed during certain periods of the year but the work was transferred and assigned to an employe of the Carrier not covered by the scope of the Agreement.

(c) That the Agent, B. L. Garner, who was entitled to the work be paid for all time lost during the period that the station was improperly closed and the work was transferred to an employe not covered by the Agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of October 15, 1940, covering rates of pay and rules of working conditions, and a Memorandum of Understanding on same, dated April 22, 1941, are in effect between the parties to this dispute.

Under authority of the Railroad Commission of Texas the Carrier closes the station at Laureles, Texas, during a certain period of each year approximating from four to six months.

During the period that the station is supposed to be closed the Carrier does not discontinue its business of handling shipments to and from Laureles.

A position of agent-telegrapher is bulletined each year as a temporary agency and assigned to an employe covered by the Agreement. This employe occupies the position during the time, designated by the Carrier, that Laureles is operated as an open station.

During the time, designated by the Carrier, that the station is closed a portion of the work formerly performed by the agent-telegrapher is assigned to an employe not covered by the Agreement.

that the Employes have acquiesced therein with knowledge of the violation claims for retroactive pay will be deemed to have been waived."

From Award No. 5013:

"The claim is for payment of a call for each day claimant has complied with the Carrier's requirement respecting the matter here in question, since August 13, 1946. In view of the following facts: (1) that the involved practice has long been acquiesced in by the Employes; (2) that despite unrefuted evidence of its existence since the effective date of the last Agreement, with knowledge on the part of the Employes, this is the first claim which has been submitted to the Carrier under Rule 20 (d); and (3) that delay in the prosecution of the claim for more than three years after it was first presented, for which it was not to blame, gave the Carrier some reason to believe the Employes were given to abandon the claim and continue to acquiesce in the practice, we feel the equities of the existing situation will be fully met if, within twenty days following the date of this Award, the interpretation herein placed upon Rule 20 (d) will be controlling, without reparation for violations prior to such date. It is so ordered."

From Award No. 5263:

"Here, it is admitted by the Employes that a Clerical employe has performed this type of work at North Tonawanda for at least the last thirteen years without protest. It is apparent that for those thirteen years the Employes recognized, as we do, that the assignment of the work was in accordance with the Agreement. The fact that mail destined for Tonawanda or from Tonawanda after the discontinuance of the Tonawanda stop was added to other mail handled at North Tonawanda in no way affects the priority of this assignment of the work."

In paragraph (c) of their Statement of Claim the Employes contend that the station at Laureles "was improperly closed". This is, obviously, an erroneous statement. Hereinabove (Historical Matter) the Carrier has shown that the closing of this station has been in accordance with and on authority received from the Railroad Commission of Texas. (See paragraphs 3 and 7 of Carrier's Statement of Facts). In view of this fact the Employes' statement that the station at Laureles "was improperly closed" is not understood.

In the foregoing the Carrier has shown that no basis in fact exists, or has existed, for the Employes' contentions as set forth in their Statement of Claim. Therefore, it is the position of the Carrier that the contentions here presented by the Employes should be dismissed and the accompanying claim accordingly denied.

The substance of matters contained in this submission have been the subject of discussion in conference and/or correspondence between the parties.

OPINION OF BOARD: This docket, for all practical purposes, involves the same question as in Docket TE-5677 upon which our Award 5654 is based except that it is made in behalf of a different claimant and for a different period of time. This claim is made in behalf of Agent B. L. Garner and is made for all time he has lost by reason thereof since June 16, 1950 and up until such time as the work is returned to employes under the Telegraphers' Agreement.

In view of our holding in Award 5654 claims (a) and (b) must be sustained thus leaving only claim (c) for further consideration.

The work on which this complaint is based was, during the year of 1950, performed by a clerk from the Agent's Office at San Benito in place of a Bill of Lading Agent appointed by the Carrier. This fact makes no controlling difference as the clerk used was not an employe covered by the Telegraphers' Agreement.

Claim (c), having arisen since May 20, 1949 when the Organization first brought this matter to the Carrier's attention and being based on a violation by the Carrier of its Agreement with the Organization, is good and therefore allowed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employe 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 violated the Agreement.

AWARD

Claims (a), (b) and (c) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of February, 1952.