

Award No. 5720
Docket No. TE-5680

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, 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, that:

(a) The Carrier violated the provisions of the Memorandum of Agreement dated April 19, 1943, relating to the employment of student telegraphers when, on June 1, 1949; June 20, 1949; and July 3, 1949, respectively, it employed and placed in training as student telegraphers, at Fordyce, Arkansas, L. N. Gaines, Jr., J. L. Garrett and B. J. McClain, without complying with either Part 1 or Part 6 of said Memorandum of Agreement, and

(b) That the Carrier shall now be required to pay claimants at the rate of pay called for in Part 1 of said Memorandum of Agreement, on the basis of the number of hours worked as student telegraphers as shown by the check rolls which they furnished at Carrier's request, as follows: L. N. Gaines, Jr., 440 hours; J. L. Garrett, 1208 hours; and B. J. McClain, 1040 hours.

EMPLOYES' STATEMENT OF FACTS: Authorized to do so by Carrier's Assistant Chief Dispatcher J. C. Gibbons, claimants L. N. Gaines, Jr., J. L. Garrett and B. J. McClain, entered the service as student telegraphers at Fordyce, Arkansas, on the following dates:

| | |
|-------------------|---------------|
| L. N. Gaines, Jr. | June 1, 1949 |
| J. L. Garrett | June 20, 1949 |
| B. J. McClain | July 3, 1949. |

They completed their work as students; were promoted to telegraphers, and commenced accruing seniority on the telegraphers' seniority roster on the following dates:

| | |
|---------|-------------------|
| Gaines | August 6, 1949 |
| Garrett | January 11, 1950 |
| McClain | January 15, 1950. |

Claimants were not compensated for their services as student telegraphers as provided for in Part 1 of the Memorandum of Agreement between the

IV

In conclusion, the Carrier respectfully submits that the Employees are requesting the Board to decide that the Carrier should make an arbitrary retroactive payment to telegraphers to cover a training period, regardless of the fact that the payment is not required by any agreement and is not justified for any reason.

The Carrier has no desire to avoid payment due employees acting at its direction. But it could not assume liability for unknown and unauthorized actions by non-employees such as alleged in this instance. They were not employees, and during a substantial portion of the time claimed two of them were not even eligible for employment.

The Employees insist that their action was authorized by the Assistant Chief Dispatcher. The Assistant Chief Dispatcher denies quite positively that he authorized the training as alleged. But even if he did (and the Carrier thinks he did not) it would not have the effect of making the claim valid. It is not alleged that he promised payment. It is asserted that he stated no payment could be made. If the claimants accepted his alleged authorization they did so on the conditions he is alleged to have set up. They cannot properly cite his alleged authorization as basis of a claim for pay when they assert he stated no payment could be made and that they acted accordingly. They were not bound to train under the conditions they allege. If they desired to train under pay they were obligated to make the arrangements to receive pay before they began training. Certainly they trained at their own risk if the circumstances were as they allege.

If any employee could after employment assert a valid claim for retroactive payment to cover a training period merely on the basis that he had discussed the question of training with some supervisor, the Carrier could never be free from liability of incurring a large time claim upon any person who had not previously worked at the trade. Such person might be able to show that he had trained desultorily for years and file an enormous claim.

There is a normal, orderly manner for persons to enter service. The claimants in this case did not follow that course, and no basis of any nature exists for an assumption that they became employees and entitled to the benefits of payment received by employees without having borne any of the obligations that employees necessarily assume.

The Carrier respectfully requests that the claim be denied.

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

(Exhibits not reproduced).

OPINION OF BOARD: This docket is concerned with the claims of three student telegraphers who contend that they were not compensated in accordance with the terms of a Memorandum of Agreement between the respondent Carrier and The Order of Railroad Telegraphers, dated April 19, 1943. The record shows that L. N. Gaines, Jr., J. L. Garrett, and B. J. McClain became telegraphers and began accruing seniority on the Telegraphers' seniority roster August 6, 1949, January 11, 1950, and January 15, 1950, respectfully. The controversy involved in the instant case had to do with their claims for compensation for the time which they are alleged to have spent as students on the Carrier's property prior to the above cited dates when they began to accrue seniority.

The Carrier has taken the position that these Claimants were never employed as students, and that in any event the Memorandum of Agreement of April 19, 1943 was cancelled and was not in effect at the time Gaines, Garrett and McClain are alleged to have been in student telegrapher status.

It would appear that two questions must be answered in making an Award on this case. First, were these Claimants put to work by the Carrier

as student telegraphers? Second, had the Memorandum of Agreement of April 19, 1943 actually been cancelled as contended by the Carrier? With respect to the first of these questions, it is clear from the record that Claimants were put to work as student telegraphers. However, they were not put to work in accordance with Section 6 of the above cited Memorandum of Agreement. There was no consultation with the General Chairman, nor any record in writing of any understanding on the matter between the Carrier's representative and the General Chairman. There is nowhere in the record convincing evidence that these Claimants were not in fact trained as telegraphers in the manner or at the location contended by the Petitioner. In view of this conclusion we must consider whether the Carrier's Agent acted properly when he permitted Claimants to enter training but in so doing did not comply with the Memorandum of Agreement cited above. In considering this phase of the matter it is necessary to deal with the second question posed above: Was the Memorandum of Agreement still in effect? A careful review of the record forces the conclusion that the Memorandum of Agreement was still in effect. It is true certain notices of possible cancellation were given, but a review of the correspondence between the parties shows that it was not in fact terminated, and that the parties continued to operate under its terms despite the discussion of possible termination. Under these circumstances, Carrier's Agent did not proceed properly when he authorized Claimants to begin training without following the procedure set out in Section 6 of the Memorandum of Agreement.

In view of these facts and circumstances it is appropriate that the claim here considered be sustained. This conclusion is supported by a previous settlement on the property involving very similar circumstances, where the Company in a letter dated March 21, 1945, recognized the merit of the claim. Our finding here is supported also by Award 2428 of the Third Division.

With respect to the number of hours for which Claimants are entitled to payment, there seems little doubt that the parties can by their joint efforts determine the proper number of hours for each Claimant. The record is not sufficiently clear on this matter to enable the Division to specify the number of hours for which payment shall be made under the terms of the Memorandum of Agreement.

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 Employees involved in this dispute are respectively Carrier and Employees 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 Carrier violated the applicable Agreement.

AWARD

Claim sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 17th day of April, 1952.