

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

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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 the St. Louis Southwestern Railway Company, that:

(a) The Carrier violated the Scope and other rules of the Agreement between the parties when it failed or refused to fill the vacancy in the position of Agent at Paragould, Arkansas, with an employee from the Telegraphers' seniority roster during the 55 day period, December 15, 1950, to February 7, 1951, both dates inclusive, and, instead required an employee not under the said Agreement to assume the duties and responsibilities of agent at this station on these days; and

(b) In consequence of its unwarranted action in thus violating the said Agreement, the Carrier shall now be required to make redress in the form of pay at the Paragould agency rate to the senior employee on the telegraphers' roster on the district—extra employee in preference, if any—not working on each day or days, during the 55 day period above stated, as shown by Carrier's records.

**EMPLOYES' STATEMENT OF FACTS:** Paragould, Arkansas, is a city of some 10,000 population, situated on the Carrier's main line approximately 238 miles south of St. Louis, Missouri, at the juncture of its Illmo and Blytheville subdivisions.

Positions listed in and/or covered by the Telegraphers' Agreement at Paragould consist of the Agent on monthly salary; and three hourly-rated telegrapher-clerks who are assigned on three consecutive shifts of eight hours each covering the 24-hour period.

In addition to the four employees under the Telegraphers' Agreement, there are three or four clerical employees under the jurisdiction of the Clerk's Agreement at Paragould.

Passenger and freight facilities are located some 200 yards apart, with the telegrapher-clerks being located in the passenger station and the clerical employees in the freight station. All employees are under the jurisdiction and supervision of the Agent.

He would not have opportunity nor feel free to formulate policies of his own relating to operation of the station or in soliciting business. He could only instruct the forces to carry out the existing policies. His answer to any problem arising would be to inquire how similar matters had been handled in the past and attempt to be guided thereby.

He would be handicapped in soliciting business. As one who would fill the position for only a few days he would not be sufficiently acquainted with local shippers or their problems to be in position to discuss complaints as to past service nor to give assurance as to future service. Unless experienced in soliciting and of a pleasing disposition, he could easily cause the loss of much more business than he could hope to gain. It requires several months for an agent on a position such as here involved to become sufficiently acquainted with the peculiarities and problems of the different shippers and become familiar with local operating conditions to the extent that he can be of material benefit in securing business and in instructing the station force.

At best it would be a poor risk to attempt to fill a position such as that of the agent at Paragould with a telegrapher pending appointment of a new agent.

Under these circumstances plain evidence would be required of an agreement to the effect that the chief clerk to a supervisory agent could not exercise supervision to carry on the essential operation of the station during the absence of the agent. There is no such evidence. The fact that the chief clerk exercises such supervision during absence of the agent on two weeks vacation or sick leave, shows it is not in violation of the scope rule. The letter agreement to the effect that the hours of assignment and working conditions would continue to be those of supervisory agents leaves no doubt the parties intended that the chief clerk continue to exercise supervision such as here involved during the absence of the agent.

#### IV

The claim includes demand for payment of money to unnamed employees (the senior idle man each day) at the rate of the agent at Paragould, although such employees held no rights to the position under the circumstances involved, and there is no showing that any of them were qualified to perform the work of the agent. They could not be entitled to pay for work which they could not perform, even if the rules gave telegraphers the right to be placed on such positions pending appointment of a new agent (which they do not).

Clearly there is no basis for the claim and the Carrier respectfully requests that it be denied.

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

(Exhibits not reproduced).

**OPINION OF BOARD:** There are no substantial differences between the parties with respect to the facts in this case. The incumbent Agent King, at Paragould, Arkansas died on December 14, 1950. The position was not filled thereafter for some 55 days. The Petitioner contends that the respondent Carrier required the Chief Clerk at Paragould to perform the duties of the position during this interim period, thus taking the work away from the Telegraphers who were entitled to it under the effective Agreement. It is stated that the Chief Clerk in question was covered by another Agreement and held no seniority under the Telegraphers' Agreement.

The Carrier contends that its action was consistent with the applicable Agreement, and that the delay of some 55 days was not unreasonable when considered in relation to the importance of the position to be filled. Furthermore, the Carrier contends that the Agent's position at Paragould was never brought fully under the Scope of the Telegraphers' Agreement.

It is clear from the record that the Agent's position at Paragould was outside the Scope of the Telegraphers' Agreement prior to September 12, 1940. On that date the parties entered into a letter Agreement wherein it was provided that the Agent's position at Paragould would come under the Scope of the Telegraphers' Agreement. There is a dispute between the parties with respect to the degree to which the Paragould position was brought under the Scope of the Telegraphers' Agreement by the letter Agreement of September 12, 1940.

The record indicates that when the letter Agreement was made it was understood by the parties to bring the position in question under the Scope of the Telegraphers' Agreement except with certain named limitations. The text of the letter itself states: "\* \* \* relative to certain agencies that have heretofore been excepted from the scope rule of agreement with employees represented by The Order of Railroad Telegraphers." (Emphasis added). Again in a letter dated June 15, 1945 the Carrier's Superintendent of Personnel stated:

"Prior to September 28, 1940, the Agencies at \* \* \* Paragould \* \* \* were supervisory positions and excepted from the scope of the agreement with the employees represented by your organization.

"As a result of the Agreement negotiated September 28, 1940, the positions above mentioned \* \* \* come within the scope of the agreement with the employees represented by your organization, the exceptions being that they are paid on the basis of a monthly rate for all services rendered, and that the positions would be filled by appointment of employees from either of the Telegraphers' seniority rosters \* \* \*." (The date stated was in error, it was intended to be September 12, 1940.)

Thus it appears to have been the intent of the parties to bring the position under the Scope of the Telegraphers' Agreement, except with respect to the stated limitations.

From the record it appears that the Chief Clerk in the interim period of some 55 days performed the Agent's duties in substantial degree over the signature of the former Agent J. T. King. Hence duties of a position which belonged to the Telegraphers under their Agreement were performed in significant degree by one with no seniority under that Agreement. The letter Agreement of September 12, 1940 stated: "Vacancies on the six monthly rated positions listed above shall be filled by appointment of employees from either of the Telegraphers' seniority rosters without regard to seniority." Therefore it seems clear that during this interim period the Carrier was obligated to fill the position until a permanent assignment was made from the ranks of the Telegraphers.

This conclusion is supported by Third Division Award 4482 which is in direct point here. This Award involved a similar controversy between the same parties involved in the instant case. In view of the facts, the applicable Agreement, and the authority of Award 4482, we are justified in finding that this claim has merit and should be 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 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 Agreement.

AWARD

Claim sustained.

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.