

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, 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:

(1) The Carrier violated the provisions of the agreement between the parties when it required or permitted employes holding no rights under said agreement to perform the service of leverman in the interlocking plant on holidays and rest days of the regular assigned employe.

(2) E. L. Cordova, regularly assigned Agent-Telegrapher-Leverman at McNeil, Texas shall be paid eight hours each day at the rate of time and one-half on the following dates when train service employes of the T.&N.O.R.R. performed the work of leverman at McNeil, Texas: September 3, 10, 24, 1949; October 1, 8, 15, 22, 29, 1949; November 5, 12, 24, 26, 1949; December 3, 17, 24, 31, 1949; January 2, 7, 14, 21, 28, 1950; February 4, 1950.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of October 15, 1940 is in effect between the parties to this dispute.

At McNeil, Texas there is one employe covered by the scope of the Telegraphers' Agreement. The position held by this employe is listed in the agreement as Agent-Telegrapher-Leverman.

E. L. Cordova was the regular assigned employe holding the position on the date covered by this claim. The work performed by the train service employes on the holidays and rest days constituted in part, the duties performed by Cordova on the other days of his assignment. This work is included in the scope of the Telegraphers' Agreement.

Claim was made by Cordova and later handled on appeal by the General Chairman. The claim was denied by the representatives of the carrier.

POSITION OF EMPLOYES: The facts in this dispute indicate an apparent disregard by the carrier of its obligations under the provisions of the agreement. The position of agent-telegrapher-leverman at McNeil, Texas includes the work of handling the interlocking plant. This plant is essential to the efficient operation of two railroads.

McNeil is located some fifteen miles from Austin, Texas on the main line of the Missouri Pacific running south to the Mexican border. A branch line

In the light of all the facts and circumstances here involved, and in the absence of any showing that the claim as here presented has merit, it is the position of the Carrier that the contention and claim of the Employees should be 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: Agent-Telegrapher-Leverman E. L. Cordova's tour of duty at McNeil, Texas, was from 9 A. M. to 6 P. M. with meal time 12 Noon to 1 P. M. Prior to September 1, 1949, his tour of duty was to work six days per week Monday through Saturday, with Sunday the assigned day of rest. Effective September 1, 1949, he was assigned to work five days per week, Monday through Friday, with Saturday and Sunday the two assigned rest days. His is an hourly rated position.

The Employees state that this claimant handled levers at the T. & N. O. interlocking plant controlling the movement of trains over the crossing during his assigned period of duty. That there were no trains operating on Sundays over the lines of the T. & N. O. and as the interlocker plant was lined for the Missouri Pacific trains, there was no need for the service of a leverman on Sundays. After September 1, 1949 no relief positions were created to take care of the work on Saturday when two trains were operating over the crossing at McNeil, Train No. 254 and Train No. 253.

The Employees state that when the work was assigned to train service employees on the T. & N. O. on Saturday, a rest day of the regular assigned employee, a violation of the Agreement resulted.

The Carrier states that McNeil is a one-man station and that if there is any need for the service of the claimant on Saturday or Sunday he is given a call. Ever since the cabin interlocker was installed over 40 years ago it has been the practice for the T. & N. O. train crew to handle the levers when the agent is not on duty. The Carrier contends that the 40 Hour Week Agreement did not specify that it should perform work on the sixth day when there is no necessity for it. This past practice may be as the Carrier states, but there is no past practice that the work was performed by T. & N. O. train crews on Saturday, a day on which the claimant worked prior to September 1, 1949, and a day on which trains did move through the plant.

As the Employees have shown, that the claimant is the employee entitled to the work on Saturday, this claim must be sustained.

The claimant has been called on Saturdays for the purpose of billing cars that are shipped out each Saturday. For this service he is paid at the time and one-half rate on the minute basis up to four hours with a minimum of two hours.

Part (1) of the claim will be sustained because the claimant was entitled to a call for the Saturday work performed by a train crew of the T. & N. O. when it operated the interlocking plant. Part (2) shall be sustained for the days claimed. The amounts received by the claimant on the calls for the billing work shall be taken into consideration in figuring the amount due claimant for the calls he should have received on the Saturdays named in the claim.

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 terms of the Agreement.

AWARD

Claim (1) sustained; claim (2) sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of January, 1953.