

Award No. 14038

Docket No. TE-13925

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)**

**SOUTHERN PACIFIC COMPANY
(Texas and Louisiana Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad Company), that:

Claim No...1

1. Carrier after having removed all of the work from the agent-telegrapher's position at D'Hanis, Texas in the manner hereinafter set forth, declared the position abolished effective November 17, 1961, in violation of the terms of an Agreement between the parties hereto.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, pay the following telegrapher-clerks, idle on their respective rest day or days, a day's pay at the time and one-half rate of the position occupied for the dates specified:

Z. A. Nelson - Dec. 6, 13, 1961

J. R. Rhea - Dec. 8, 15, 21, 28, 1961

E. J. Johnson - Dec. 9, 16, 23, 30, 1961

3. Carrier shall, in addition to the foregoing, compensate each of the above named employes a similar amount for each date subsequent to those set out in paragraph 2 hereof so long as the violation complained of continues. If named employes are not available on such dates, then the same compensation shall be paid to the senior idle employe, or employes who are available on such dates.

Claim No...2

1. Carrier violates the Scope and other rules of an Agreement between the parties hereto, and more specifically the Agreement of

July 10, 1961 when effective January 3, 1962, it unilaterally removed from the agent-telegrapher's position at Cline, Texas, the work in connection with the preparation of waybills, switch lists, and other duties incidental to the billing of carload freight and thereafter permitted or required employes of the Uvalde Rock and Asphalt Company at Cline, Texas to perform this work.

2. Carrier further violates the parties' Agreement effective January 3, 1962 when it permits or requires employes outside the scope of the parties' Agreement in Carrier's Regional Accounting and Billing Office, San Antonio, Texas, to perform work in connection with the billing of cars moved from Cline, Texas, on memo-waybills prepared by the Uvalde Rock and Asphalt Company by conductors, which is work formerly performed by the agent-telegrapher at Cline, Texas.

3. Carrier shall, because of the violations set out in paragraphs 1 and 2 hereof, restore the work improperly removed from the agent-telegrapher's position at Cline, Texas, and from the Agreement, to the employes covered thereby in accordance with the terms of the July 10, 1961 Agreement.

4. Carrier shall, in addition to the foregoing, compensate the following named telegrapher-clerks idle on their respective rest day or days, a day's pay at the time and one-half rate of the position occupied on the dates specified on which employes not entitled under the terms of the parties' Agreement performed the work in question:

J. E. Moeller, January 3, 1962; E. J. Moltz, January 4 and 5, 1962; F. J. Garcia, January 6, 1962.

5. Carrier shall, on such day or days, other than those set out immediately above, on which named employes are not available to perform the work in question, compensate the senior idle employe, or employes, who were available on such dates so long as the violation complained of continues.

NOTE: The Cline agency, subsequent to the filing of this claim, has been discontinued as an open agency.

GENERAL AND HISTORICAL DATA

The petitioner, representing the employes in the Telegraphers' class on this property, is The Order of Railroad Telegraphers and will hereinafter be referred to as Employes or ORT.

The Southern Pacific in Texas and Louisiana (Texas and New Orleans Railroad Company) is the respondent and will hereinafter be referred to as Carrier.

There is in evidence an Agreement by and between the parties to this dispute, effective December 1, 1946 and September 1, 1949, and as otherwise amended.

Copies of said Agreements are on file with your Board and are by reference thereto made a part of this submission.

OPINION OF BOARD: There are two claims. While the same Rules of the Agreement and the interpretive principles apply to both, the facts are not altogether similar. For this reason it is necessary to set out the essential facts in each.

Claim No. 1

Prior to November 17, 1961, an Agent-Telegrapher was employed at D'Hanis, Texas, with assigned hours of 7:30 A.M. to 5:30 P.M. with one hour for lunch. His workweek was Monday through Friday.

Early in 1961, Carrier filed an application with the Railroad Commission of Texas for authority to discontinue the agency at D'Hanis. At the hearing held by the Commission on August 10, 1961, where representatives of the Order of Railroad Telegraphers were present, Carrier introduced evidence that during the year 1960 the D'Hanis agency operated at a loss of \$962.12; that the business at this agency was materially reduced; that Hondo and Sabinal were stations with Agent-Telegraphers, respectively 8.5 miles east and 12.5 miles west of D'Hanis. On October 31, 1961, the Railroad Commission of Texas issued an order authorizing the Carrier to close station at D'Hanis. A copy of the Commission's Order, marked ORT Exhibit No. 1, is attached to and made a part of Employees' Ex Parte Submission.

The agency at D'Hanis was discontinued on November 17, 1961. Thereafter, the conductor of the local train serving D'Hanis began signing shippers' copies of bills of lading taken from a "bill box" set up for the convenience of the shippers. Copies of the bills of lading were left in the box for the shippers. Agents at Sabinal prepared waybills for westbound shipments and agents at Hondo prepared waybills for eastbound shipments. These waybills directed the movement of the freight cars and the collection of freight charges.

Claim No. 2

Cline, Texas was a one man agency. It is located on the main line of the Southern Pacific Railroad between San Antonio and Del Rio, 18.3 miles west of Uvalde. A branch line 6.44 miles long, with switch connection to the main line at Cline, serves the Uvalde Rock Asphalt Company mine, where loads are handled to and from the mine.

The Uvalde Rock Asphalt Company has its main office at San Antonio. This company notified the Carrier that effective January 2, 1962, all their billing was to be done through the Carrier's agent at San Antonio rather than through the agent at Cline. A box was installed on the interchange track at the Cline Mine and the Asphalt Company now places a copy of the shipping instructions in the box where they are picked up by a conductor. The cars are moved to San Antonio on the shipping instructions.

The agent at the regional office at San Antonio prepares the waybills and signs the bills of lading. The conductor does not sign the bills of lading. All orders for empty equipment are also handled by the Agent at San Antonio.

Prior to January 2, 1962, the Agent-Telegrapher at Cline made a trip to the mine each morning, checked all cars, picked-up and signed bills of lading for cars to be moved, and also received other switching information. He would then return to his station and prepare the waybills.

With the permission of the Railroad Commission of Texas, the station at Cline was closed on November 1, 1962.

Employees argue (1) that the collective bargaining agreement between the parties supersedes and takes precedence over the orders of the Railroad Commission of Texas; (2) that the Agreement reserves to the employees covered thereunder the exclusive right to prepare and sign bills of lading and not shippers and conductors; (3) that a substantial amount of the Agent-Telegraphers work remained to be done, thus the positions may not be abolished; (4) that a one man agent has the right to perform all of the work at that station; (5) that where work of a position remains to be performed, it may not be transferred to employees not covered by the Agreement; (6) that methodological changes in work do not give Carrier the right to transfer work to employees not covered by the Agreement.

We affirm the principle that the order of the Railroad Commission of Texas may not supersede or abnegate the provisions of the applicable Agreement negotiated by the parties. The issues before this Board will be determined on the basis of the facts in the record and the application of the rules of that Agreement. If there is a conflict between the orders of the Commission on the rules of the Agreement, and we presently find none, the rules of the Agreement alone will be considered.

Employees admit that the Carrier is "free to abolish positions . . . when the work thereof disappears or when the work is substantially reduced" but contend this applies only "so long as the remaining work of the positions is assigned to employees covered by the Agreement in the seniority district in which the work arises."

While the order of the Railroad Commission of Texas may not supersede contractual obligations, the evidence before this Commission, when it is a part of the record, is pertinent to established relevant facts. The order of the Commission is in the record. It shows that the work of Agent-Telegrapher at D'Hanis was "substantially reduced." No LCL had been handled by train crews from cars at D'Hanis for more than ten years. Except for "country freight" which was practically non-existent, this merchandise had been handled by Southern Pacific Transport Company trucks, directly from truck to the customers' place of business. These facts are confirmed by the order of the Commission which reads:

"Therefore, It is Ordered by the Railroad Commission of Texas that Texas and New Orleans Railroad Company be, and it is, hereby authorized to discontinue its agency at D'Hanis, and to establish D'Hanis, Texas, as a pre-pay station in the freight tariffs. It is made one of the conditions of this Order that the present less-carload service at D'Hanis by Southern Pacific Transport Company shall be continued; that Southern Pacific Transport Company shall establish a commercial agent or CTO in D'Hanis for the handling of 'country freight' and continue pick-up and delivery service within the delivery limits of D'Hanis." (Emphasis ours.)

The preparation of waybills and bills of lading was transferred from D'Hanis to agents at Hondo and Sabinal and the preparation and signing of waybills and bills of lading was transferred from Cline to San Antonio. On July 10, 1961, the parties entered into an agreement which provided that:

"3. Work may be transferred from one regional station to another on the San Antonio Division at the discretion of the Auditor, or that the work may be returned to the original station from which it came."

D'Hanis, Cline, Sabinal and Hondo, among others, were established as regional stations. Another agreement dated August 17, 1961, established a regional agency at San Antonio, Texas, to which all regionalized work handled on San Antonio Division could be transferred. Under these agreements Carrier has a right to transfer work of waybilling from D'Hanis to Hondo and Sabinal and from Cline to San Antonio.

Only the work of signing of bills of lading by conductors of the train serving D'Hanis remains in question. It is doubtful if that represents any appreciable amount of work formerly done by the Agent-Telegrapher. Even if this work was improperly transferred to the conductor, the total work of the Agent-Telegrapher at D'Hanis was "substantially reduced."

But signing of bills of lading, which is clerical work, has never been the exclusive work of Telegraphers. Carrier's instructions to station agents provide that conductors may sign bills of lading and waybills from non-agency stations and from agency stations under certain conditions. Employees do not deny the existence of these instructions. They argue only that such instructions should not be considered as evidence because it was raised for the first time at the Board level. This is not so. On January 12, 1962, Carrier's Superintendent wrote to the Employees' District Chairman and said that "a conductor can certainly be required to sign bills of lading; in fact, that is one of his prescribed duties at points where no agent is employed." In a letter addressed to Employees General Chairman dated March 22, 1962, Carrier's Manager of Personnel said:

"The work performed by the conductor is work normally performed at closed stations and is provided for in Circular 40-1. This arrangement has been in effect about fifty years and has been accepted by the Organization as a proper method of performing the work."

The General Chairman replied on March 26, 1962, and with reference to this question said:

"You go on further to make the statement that work performed by the conductor is work normally performed at closed stations and is provided for in Circular 40-1, and that this arrangement has been in effect for about 50 years and has been accepted by the Organization as a proper method for performing the work. I am in no position to know just what instructions are contained in your circular 40-1, nor do I care. With reference to your statement that the arrangement has been in effect for about 50 years and has been accepted by the Organization as a proper method for performing the work is not true insofar as this Organization is concerned. You do not claim, of course, that the ORT has accepted such thing as a proper method for performing the work. We have never accepted any arrangement on any railroad where the work is taken away from the telegraphers and delegated to persons not embraced within the Scope of the Telegraphers' Agreement for performance and will not do so hereafter."

Whether the Employees accepted the instructions in Circular 40-1 is immaterial. The fact is that the signing of bills of lading by conductors at

closed stations has been done for a good many years. There is no evidence in the record that the employes ever challenged this practice. On the basis of past practice, custom and tradition, Telegraphers do not have the exclusive right to sign bills of lading at closed stations. Conductors have done this work. D'Hanis is a closed station.

Award 6975, relied upon by the Employes, is not applicable. In that case the claim was by an Agent-Telegrapher for a call on Saturday, his rest day, for the purpose of signing a bill of lading done by a conductor. He had previously been called on his rest day by the shipper to sign bills of lading. The Board sustained the claim and said:

"The decision in the present case is based on the fact that the Agent-Telegrapher at a one-man station owns all of the station work at that point and not on the ground that the signing of bills of lading and billing cars is the exclusive work of a Telegrapher."

Here, the station was closed; the agency position was abolished. There was no agent on duty at D'Hanis on any day of the week.

The same is true of Award No. 54 of Special Board of Adjustment No. 41. The facts are substantially the same as in Award 6975. It is clearly distinguishable for the same reasons.

At Cline the conductors did not even sign the bills of lading. They only received shipping instructions and moved cars from the information contained in them. All preparation and signing of bills of lading and waybills were transferred to the agent at San Antonio. The transfer of such work is permissible under the July 10, 1961 and the August 17, 1961, agreements.

Upon the relevant evidence in the record, we are obliged to conclude that there is no merit to Claims No. 1 and No. 2.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Carrier did not violate the Agreement.

AWARD

Claims No. 1 and No. 2 are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day December 1965.