

205
Award No. 15825
Docket No. TE-14651

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad (Gulf District), that:

1. The Carrier violated the Telegraphers' Agreement when it blanked the assignment of second trick telegrapher-clerk at Opelousas, Louisiana, nights of July 28, 29, 30, 31 and August 1, 1962. Saturday and Sunday nights, July 28 and 29, calls assigned 1:20 A. M., July 30, 31 and August 1, 11:30 P. M. to 7:30 A. M.
2. The Carrier shall compensate the following employes for this violation who were on their rest days:

E. H. Miller, Saturday night, July 28, 1 call, 2 hours punitive rate \$3.8442;

E. H. Miller, Sunday night, July 29, 1 call, 3 hours punitive rate \$3.8442;

O. S. Smith, Monday and Tuesday nights, July 30 and 31, 8 hours each night at regular time \$2.5628, a total of \$41.0048;

L. P. Dennis, Wednesday night, August 1, 8 hours regular time \$2.5628, total \$20.5024.

EMPLOYEES' STATEMENT OF FACTS: Opelousas, Louisiana is located 58 miles west of Baton Rouge, Louisiana on the Anchorage Subdivision of the Missouri Pacific Railroad (Gulf District). There are two positions under the Telegraphers' Agreement at this location, namely, Star Agent Telegrapher and Telegrapher-Clerk. The Star Agent's position is assigned 8:00 A. M. to 4:00 P. M., Monday through Saturday with rest day Sunday. The Telegrapher-Clerk position is assigned Monday through Friday with rest days Saturday and Sunday and has assigned hours of 11:30 P. M. to 7:30 A. M. with an assigned call on Saturday and Sunday between 1:20 A. M. and 3:20 A. M.

Telegrapher-Clerk R. C. Musgrove assigned to the position at Opelousas requested permission to be off from his regular assigned position for the per-

Further investigation also revealed that there were no extra telegraphers available. The claimants in this instance are all regular assigned employees.

In view of the foregoing, we find no justification for changing our decision declining the claim given you in our letter dated February 1, 1963."

Carrier's final decision in this dispute was rejected by the Employes.

OPINION OF BOARD: The instant controversy arises out of the excused absence of the regular incumbent on the 11:30 P. M. to 7:30 A. M. shift at Opelousas, Louisiana on the dates of claim. Claimants, three regularly assigned employes, contend that they should have been called on their rest days to provide relief service because no extra telegraphers were available.

Carrier contends that the position was blanked on the claim dates and was not filled until August 7, 1962, when an extra telegrapher became available.

Although the Statement of Claim avers that the Carrier violated the Agreement by blanking the position on specified dates, Petitioner's case actually is bottomed on the premise that the position was not blanked because trainmeeters handled U. S. Mail and baggage in connection with Trains No. 52 and 53 on the dates of claim. Carrier contends that the disputed work performed by the trainmeeters is work which they customarily and traditionally have performed since 1944 at Opelousas and all over Carrier's system since they were first retained in service many years ago. Therefore, Carrier concludes that the trainmeeters did nothing but their own traditional work on the dates involved herein and performed none of the duties of the blanked position.

Petitioner asserts that because a trainmeeter initially was retained by Carrier to assist the telegrapher in handling U. S. Mail, baggage and express in 1944, the sole function of trainmeeters at the present time is to assist telegraphers. Petitioner argues that assistants are mere "helpers" not qualified to work alone, and that the Carrier did not actually blank the telegrapher position during the absence of the incumbent as work belonging to the position was performed by others.

A careful examination of the record does not support Petitioner's hypothesis and reveals that the Carrier expanded the responsibilities of the trainmeeters after 1944. An additional trainmeeter was retained by Carrier in 1948, and two assignments designated as trainmeeters have been maintained at all times since then.

A similar dispute arose in 1953 which culminated in our Award 7424, denying a request that the position of trainmeeter be discontinued and the work performed by them assigned to employes belonging to a different organization. We find that the determinative question in the instant dispute is the same as that stated in Award 7424, which is "whether the particular work is comprehended in the scope rule."

Petitioner has offered no probative evidence that the trainmeeters performed any different duties than they normally performed during the absence of the incumbent. Furthermore, Petitioner has offered no convincing evidence to refute Carrier's defense that trainmeeter assignments have absolutely nothing

to do with whether or not a Telegrapher-Clerk is worked or not worked. Carrier cites the fact that when the current agreement was negotiated in 1952, no provision was included which would have the effect of modifying or revoking established practices concerning the use of trainmeeters.

The Scope Rule of the applicable Agreement is general and does not specifically reserve the disputed work to the telegrapher positions. The record clearly reflects that trainmeeters at Opelousas as well as other points throughout Carrier's system customarily bring mail from the post office, work the trains and then return mail to the Post Office. Petitioner has offered no evidence that other duties were performed by them on dates set forth in this claim. There is no basis for concluding that the disputed work belongs exclusively to employes represented by Petitioner, and we find no merit in Petitioner's contention that the telegrapher-clerk position was not actually blanked as alleged by Carrier. Award 15633. Accordingly, we will deny the claim.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of September 1967.

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