



Award Number 17553

Docket Number TE-15663

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, 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 Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on the Missouri Pacific Railroad (Gulf District), that:

1. Carrier violated the Agreement when, on May 17, 1964, it unilaterally declared abolished the position of second shift Assistant Manager-Telegrapher at Kingsville, Texas, re-arranged the remaining shifts of Manager-Telegrapher and Wire Chief-Telegraphers and assigned the work between the hours of 4:00 P.M. to 7:00 P.M. and 3:00 A.M. to 8:00 A.M. to clerical employees and the yard personnel at Kingsville, Texas. Additionally, train orders and communications of record formerly performed by the Telegraphers in "K" Office, Kingsville, were transferred to the Telegraphers at Harlingen, Odem and Vanderbilt, Texas, for delivery and relay to Houston and Corpus Christi, Texas.
2. The position of second shift Assistant Manager-Telegrapher at "K" Office, Kingsville, Texas, shall be restored and the work thereof returned to the Agreement and to Telegraphers at Kingsville.
3. Carrier shall now be required to compensate L. W. Rice for eight hours' pay at the rate of the Assistant Manager-Telegrapher position "K" Office, Kingsville, Texas, each work day, in addition to pay at the time and one-half rate for work performed outside the assigned hours of the second shift position's hours of 3:45 P.M.-11:45 P.M. at Kingsville, Texas, plus actual expenses incurred each day Mrs. Rice works at a station where the hours do not correspond to the second shift position at Kingsville.
4. All other employees improperly displaced as a result of violation hereinabove set out, shall be compensated in the same manner as outlined in paragraph 3. A joint check of Carrier's records shall be made to determine the names of the beneficial claimants.

regarding the alleged performance of telegrapher's work by clerks at Kingsville.

Conference was held on July 30, 1964, and nothing new was furnished by the General Chairman to support a claim that work reserved exclusively to telegraphers at Kingsville had been transferred to clerks at Kingsville or telegraphers at Odem, or Harlingen, Texas.

11. The General Chairman advised by letter dated September 7, 1964, that the claim was to be appealed to your Board for hearing, and Carrier's file was considered closed so far as handling the dispute on the property was concerned.

OPINION OF BOARD: In this dispute the Employees allege violation of the Agreement occurred when the Carrier abolished one position at "K" Office, Kingsville, Texas, re-arranged the hours of the remaining positions and reassigned the work of the abolished position to employees who allegedly had no right to perform it, to the detriment of the displaced employee and other who were in turn adversely affected.

A careful study of the record leads to a conclusion that the true basis for the claim is a contention that during the hours when no telegrapher is on duty at Kingsville necessary train order and other communication work is being accomplished by means which are contrary to the terms of the agreement; and, this being so, the abolishment itself was improper.

These allegations raise serious questions, important to the rights and obligations of both the Carrier and employees. It is established beyond dispute, however, that the burden of showing how and to what extent a challenged act or acts does in fact violate the agreement rests upon the employees.

The employees have not met their burden here. For example, they have not shown how the copying of a train order by a telegrapher at Odem would violate the rights of another telegrapher at Kingsville so as to render the Carrier's act of abolishing a position at the latter place a violation of the agreement. To be sure, there is a vague indication that the train orders in question were to be delivered to another crew at Kingsville and that in some unspecified way this would violate the "train order rule". But Rule 2(d) specifically provides for such handling, and allows a definite payment. However, there is no claim for payment under Rule 2 (d) before us. And we cannot supply what is lacking, or speculate as to what was intended.

Similarly, the employees have supplied no proof that other incidents, referred to in more or less general terms, were in fact violations of the Agreement.

Under such circumstances this Board can only dismiss the claim for lack of proof. It is so ordered.

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 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 Agreement was not shown to have been violated.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.