



Award Number 17830

Docket Number TE-18066

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**THE KANSAS CITY SOUTHERN RAILWAY COMPANY
LOUISIANA & ARKANSAS RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Louisiana and Arkansas Railway, that:

1. Carrier violated the Agreement between the parties when on September 20, 1967 a Kansas City Southern telegrapher was used to fill a Louisiana and Arkansas Railway position in the coordinated facilities in Deramus Yard, Shreveport, Louisiana.
2. Carrier shall be required to compensate Telegrapher V. G. Parker for 8 hours at the time and one-half rate of the third trick assignment in Deramus Yard, Shreveport, Louisiana.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

An Agreement between the parties, effective January 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was timely presented, progressed in accordance with the provisions of the Agreement, including conference with the highest officer designated by the Carrier to receive appeals, and has been declined. The Employees, therefore, appeal to your Honorable Board for adjudication.

This claim arose when Carrier assigned a telegrapher in the employ of the Kansas City Southern Railway to fill a one day vacancy in a position assigned to telegraphers employed by the Louisiana and Arkansas Railway in Deramus Yard, Shreveport, Louisiana.

(b) ISSUES

Failure of Carrier to comply with Agreement of December 7, 1955 providing for the coordination of KCS and L&A positions in Shreveport, Louisiana.

(c) FACTS

By a Coordination Agreement finalized on December 7, 1955, the telegraphers' positions on the KCS and L&A Railways in Shreveport, Louisiana were allocated on the basis of the total number of positions in effect on both Carriers at that time. Certain positions were allocated to KCS em-

"Extra and vacation relief work (including temporary positions and temporary vacancies contemplated in Rule 4-5) on positions allotted to KCS employees shall be performed by KCS employees; and extra and vacation relief work (including temporary positions and temporary vacancies contemplated in Rule 4-5) on positions allotted to L&A employees shall be performed by L&A employees. If such work is not protected through the operation of Rule 4-5, and there are no regularly assigned or extra employees available on the carrier involved, employees of the other carrier (an available extra man who has not had five days' work within his work week, or an available employee regularly assigned at Shreveport, in that order), may be used to meet the emergency until employees of the first carrier can be made available; while being so used such employees will be paid in accordance with the applicable rules, and while working for the other carrier they will not acquire seniority thereon but will retain and accumulate seniority on their respective home carrier."

For some time prior to claim, there had been a vacancy on the 11:59 PM Telegrapher position at Shreveport, because of the regular incumbent (Welch) working as dispatcher. The 11:59 PM job is a 7-day position filled Wednesday through Sunday by Welch, an L&A employee, and on Monday and Tuesday by a regular relief employee — a KCS employee. On Tuesday, September 19, 1967, the 11:59 P.M. position was filled by the regular assigned relief employee (Protho, a KCS employee) and on claim date, Wednesday, September 20, 1967, in the absence of an available, regular or extra L&A employee, it was again filled by Protho, the only available telegrapher at Shreveport. (Protho's rest days were Wednesday and Thursday.)

Claimant was regularly assigned as telegrapher at Alexandria, La., located 129 miles south of Shreveport. Two-shift telegrapher service is maintained daily at Alexandria, the first shift 8:00 A.M. to 4:00 P.M., the second shift 10:00 P.M. to 6:00 A.M. During the month of September, 1967, there was a shortage of telegraphers at Alexandria, brought about by the retirement of the first-trick operator and an at-home injury to the second-trick operator, with the result that it was necessary to work claimant 19 consecutive days during the period September 1 through September 19, 1967, and he was not available for service at Shreveport on claim date.

(Exhibits Not Reproduced)

OPINION OF BOARD: The claim herein arose in connection with the filling of a third-shift telegrapher position in coordinated facilities in Dera-mus Yard, Shreveport, Louisiana, on September 20, 1967.

Article 5(c) of the Coordination Agreement dated December 7, 1955 reads:

"Extra and vacation relief work (including temporary positions and temporary vacancies contemplated in Rule 4-5) on positions allotted to KCS employees shall be performed by KCS employees; and extra and vacation relief work (including temporary positions and temporary vacancies contemplated in Rule 4-5) on positions allotted to L&A employees shall be performed by L&A employees. If such work is not protected through the operation of Rule 4-5, and there are no regularly assigned or extra employees available on the carrier involved, employees of the other carrier (an available extra

man who has not had five days' work within his work week, or an available employee regularly assigned at Shreveport, in that order), may be used to meet the emergency until employees of the first carrier can be made available; while being so used such employees will be paid in accordance with the applicable rules, and while working for the other carrier they will not acquire seniority thereon but will retain and accumulate seniority on their respective home carrier."

The Petitioner contends that the Agreement was violated when the Carrier assigned a telegrapher in the employ of the Kansas City Southern Railway to fill a one-day vacancy in a position assigned to telegraphers employed by the Louisiana and Arkansas Railway in the coordinated facility. The Carrier contends that Article 5(c) of the Coordination Agreement does not contemplate that Louisiana and Arkansas Railway employees at locations other than Shreveport should be given preference to L&A vacancies at Shreveport; that it has always been the practice to use Shreveport employees on Shreveport vacancies; that Claimant, who was regularly assigned as telegrapher at Alexandria, La., some 129 miles from Shreveport, was not available, and that he suffered no deprivation of earnings.

It is well settled that this Board must apply agreements as written. We do not find in Article 5(c) of the Coordination Agreement of December 7, 1955, any provision restricting the rights of L&A employees at locations other than Shreveport to L&A vacancies at Shreveport, as contended by the Carrier. Further, the record contains no evidence to support the practice alleged by the Carrier. We likewise find no evidence to support the contention that Claimant was not available. Article 5(c) of the Coordination Agreement of December 7, 1955, was violated and the claim will be sustained.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1970.