



Award Number 17973
Docket Number TE-17545

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Missouri-Kansas-Texas Lines, that:

1. Carrier violated the provisions of the Telegraphers' Agreement, and Memorandum of Agreement concerning the coordination at Stamford, Texas, by requiring and permitting the use of an employee not coming under said provisions of existing agreements to handle train orders on the MK&T telegrapher-cashier's position at Stamford, at 2:31 A.M., Friday, May 27, 1966.
2. Carrier shall compensate the senior, idle telegrapher (extra in preference) in the amount of a day's pay for such violation. Such entitled employee holding rights on the MK&T South Texas Telegraphers' District.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute herein is based upon various provisions of an Agreement made between the Missouri-Kansas-Texas Railroad Company and the Fort Worth & Denver Railway Company, hereinafter referred to as Carrier, and the Transportation-Communication Employees Union, hereinafter referred to as Employees or Union, dated September 1, 1949 (MKT) and December 1, 1955 (FW&D), as amended and supplemented, and more specifically the Memorandum of Agreement made between the parties dated January 25, 1966, and by this reference is made available to your Board.

The claim arose when on Friday, May 27, 1966, at 2:31 A.M., a Fort Worth & Denver employee, Agent-Telegrapher T. D. McKinney performed service during the hours of assignment of a Missouri-Kansas-Texas Telegrapher-Cashier position by copying Train Order No. 4 and clearing Missouri-Kansas-Texas train, Extra 102, at Stamford, Texas.

The dispute was handled in the usual manner on the property up to and including the highest Officer of the Carrier designated to handle claims and grievances, including conference, and was disallowed.

(b) ISSUES

1. Does the Carrier, who is a party to a Special Agreement, violate

Tuesday-Wednesday—5:00 P.M. to 1:00 A.M., Telegrapher-Clerk.
Taylor;

Thursday-Friday—Rest days.

Taylor is located about 11 miles south of Granger; 73 miles south of Waco, and 161 miles north of Houston, time table directions. Stamford is located 227 miles west of Waco on the Rotan Subdivision which is branch line territory. No passenger trains are operated on any part of this railroad, the last such service between Kansas City and Dallas was discontinued July 1965.

The claim was declined by Superintendent Putsche August 4, 1966; appealed to the undersigned September 28, 1966; declined by the undersigned November 22, 1966; discussed and declined in conference with the undersigned June 27, 1967, when extension of time limit for submitting this claim to the Third Division by the Organization was agreed to by the undersigned until November 22, 1967.

Attached hereto and made a part hereof, is copy of correspondence exchanged by the parties in handling this matter as Carrier's Exhibit "D".

(Exhibits Not Reproduced)

OPINION OF BOARD: Agreement was executed on January 25, 1966 wherein the station facilities of Fort Worth and Denver Railway Company (herein referred to as FWD) and Missouri-Kansas-Texas Railroad Company (referred to as MKT) would be coordinated at Stamford, Texas effective May 1, 1966.

Two positions were provided for at the coordinated facility as follows:

Agent-Telegrapher	FWD
Telegrapher-Cashier	MKT

On May 20, 1966, Mr. Parks Telegrapher-Cashier at Stamford, was dismissed. On May 27, 1966 Carrier called out Agent-Telegrapher to handle train orders and the clearances required.

Employees contend that Carrier's action in calling out Agent-Telegrapher to handle such orders was a violation of the MKT Agreement.

Carrier's position is that MKT Agreement was not violated. It contends that there is no provision contained in the Coordination Agreement that prohibits a FWD Telegraph Operator from performing work where Carrier is not able to fill the MKT position with a qualified M.K.T. employee. It further contends that Claimant was not qualified in Morse Code and was therefore not qualified to fill the vacancy.

The record reveals that Agent McKinney, Agent-Telegrapher under the FWD Agreement filled the vacancy for approximately two weeks after the vacancy occurred. Said Agent was not qualified in Morse Code as was the situation with the Claimant.

We are persuaded that under the terms of Section 3 of the Coordination Agreement the Carrier was obligated to fill the position of Telegrapher-Cashier at Stamford, Texas in accordance with the provisions thereof. This the Carrier failed to do. We are further persuaded that the MKT Agreement was also violated when the Carrier permitted an employee not covered by the Agreement to handle train orders on May 27, 1966.

The Board concludes that the Carrier must make compensation to the Claimant for its breach of the Agreement even though other employees on the same seniority district might have made claim if they had chosen to so do.

We find support for the conclusion herein that the violation of the Agreement requires compensation as reparation for such breach. See Award 11701 and 12374.

Accordingly, the claim must 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 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 violated the Agreement.

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 12th day of June 1970.