Award No. 18322
Docket No. TE-18725

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Southern Pacific Company (Pacific Lines), T–C 5721, that:

1. Carrier violated the Agreement between the parties, when on March 18, 25, April 4, 8, 15, 18, 22, 25, 29, May 2 and 6, 1967 it required an official of the Carrier, not covered by said Agreement, to assist and supervise handling of the Agent-Telegrapher position at Coolidge, Arizona and the position of 2nd Telegrapher-Clerk at Gila, Arizona.

2. Carrier shall compensate Kruse Davis, Agent-Telegrapher, Coolidge, Arizona, for eight hours at the time and one-half rate for each date March 18, 25, April 8, 15, 22, 29 and May 6, 1967.

3. Carrier shall, because of violations at Gila, Arizona, compensate the senior extra Telegrapher, available and competent, on the Tucson Division, one day's pay (eight hours' compensation); if no extra Telegrapher available, then the senior regular assigned Telegrapher nearest Gila, will be allowed one day's pay (eight hours' compensation) for each date April 4, 18, 25 and May 2, 1967.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is predicated on various provisions of the collective bargaining Agreement, entered into by the parties effective December 1, 1944 and understandings appertaining thereto. Claim was submitted to the proper officers of the Carrier at the time and in the usual manner of handling, as required by Agreement rules and applicable provisions of law. The dispute was discussed in conference between representatives of the parties on August 1, 1969.

The controversy arose on May 19, 1967 when the Carrier's Superintendent disallowed the measure of compensation set out in the above Statement of Claim.

quent dates account Carrier's use of an unqualified employe on Claimant Davis' position on his assigned rest day. In addition thereto, a blanket claim was submitted in behalf of the senior available qualified telegrapher or the regularly assigned telegrapher on any position relieved by an unqualified employe at any location on the Tucson Division for any date subsequent to March 25, 1967.

By letter dated May 19, 1967 (Carrier's Exhibit B), Carrier's Division Superintendent denied the claim. By letter dated May 21, 1967 (Carrier's Exhibit C), Petitioner's Acting District Chairman gave notice that the claim would be appealed and in addition thereto, the Acting District Chairman alleged that an unqualified employe was also used on the 2nd Telegrapher-Clerk position at Gila Bend on ". . . several times subsequent to March 18, 1967."

By letter dated May 25, 1967 (Carrier's Exhibit D), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel in behalf of Claimant Davis for March 18 and 25, 1967, including subsequent dates that an unqualified employe performed service at Coolidge. A blanket claim was also appealed for unnamed claimants on unspecified dates subsequent to March 25, 1967, when such an unqualified employe performed service ". . . on any position at any station on the Tucson Division . . ." This letter did not specifically refer to any such contentions at Gila Bend on dates subsequent to March 18, 1967.

By letter dated August 8, 1969 (Carrier's Exhibit E), Carrier's Assistant Manager of Personnel denied the claim and directed attention to the procedural defects evident in the claim, stating as follows:

> "In paragraphs numbered 1, 2, 3 and 4 of your letter, you use the words 'an unqualified employe.' In the body of your letter you refer to W. S. McCoy. If it is your intention by the use of the words 'an unqualified employe' to have reference to unnamed employes other than W. S. McCoy, the Company takes the position that the entire claim is improper and cannot be considered in that it is entirely too vague and indefinite. On the basis that 'an unqualified employe' has reference only to W. S. McCoy, it is our position that the continuing portion of the claim having reference to unspecified dates, unspecified occurrences, and unnamed claimants, does not constitute a proper claim and, therefore, is not properly before us."
>
> (Exhibits not reproduced.)

OPINION OF BOARD: Carrier moves that the Claim be dismissed on the grounds that it is at variance with the claim handled in the usual manner on the property.

The occurrence alleged in the claim on appeal to Carrier's highest officer reads:

> "Carrier violated and continues to violate the terms and intent of the current TCU Agreement **when . . . it permitted, or required an unqualified employe to perform services** at Coolidge, Arizona, by relieving Agent Telegrapher Kruse Davis, Jr., on rest days of his regular assigned position of Agent-Telegrapher, **Coolidge, Arizona.**" (Emphais ours.)

The occurrence alleged in the Claim presented to this Board reads:

"Carrier violated the Agreement . . . when . . . **it required an official of the Carrier, not covered by said Agreement, to assist and supervise handling** of the Agent-Telegrapher position at Coolidge, Arizona **and the position of 2nd Telegrapher-Clerk at Gila, Arizona.**" (Emphasis ours.)

We find that there is a fatal variance in the foregoing allegations.

Paragraph 3 of the Claim, as presented to this Board, is at variance with paragraph 3 of the claim handled in the usual manner on the property. Further, both of those paragraphs are procedurally defective for lack of specificity as to occurrence(s). See Article V of the August 21, 1954 National Agreement.

For lack of jurisdiction Carrier's motion for dismissal is GRANTED.

NOTE: To avoid confusion as to the meaning of the word "jurisdiction" as used as reason for granting Carrier's motion and as used, **infra**, in our Findings that the Division "has jurisdiction over the dispute involved herein:"

1. The parties having handled the dispute in the usual manner on the property and having failed to reach an adjustment in this manner either party had the statutory right to refer to by petition to this Division. Section 3 First (i) of the Railway Labor Act. The filing of the petition by the Organization in this case vested the Division with "jurisdiction" to consider and resolve issues timely raised. The word "jurisdiction" is used in this sense in our Finding, **infra**, that the Board "has jurisdiction over the dispute involved herein";

2. Carrier timely moved that the Division was without "jurisdiction" to consider the dispute on its merits because the Claim filed with the Board was at variance with the claim handled in the usual manner on the property — an issue as to jurisdiction may be raised at anytime during the course of proceedings. The words "lack of jurisdiction" are used in this sense in our reason for granting Carrier's motion.

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 Claim must be dismissed for lack of jurisdiction.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of December 1970.

DISSENT TO AWARD 18322, DOCKET TE-18725

This award employs language that is improper for the purpose to which it is addressed because it tends to confuse those who are most vitally concerned, hence this dissent.

Assuming, at least for the purpose of this discussion, that the basic finding of a fatal change in the form of the claim from that handled on the property was correct, the words used to formalize that finding appear to be precisely contradictory, therefore confusing and improper.

The official "Findings" contain a statement to the effect that this Division has jurisdiction over the dispute and that the claim must be dismissed for lack of jurisdiction. On its face this is clearly contradictory and the effort of the Referee, laudable as his intention was, fails to resolve the conflict in words because it seeks to clarify a legalism with legalistic language, both of which are incomprehensible to most railroad men who have little knowledge of such terms.

Granted that the use of the word "jurisdiction" may be entirely correct in a legal sense, nevertheless it is incorrect when directed to persons who have neither knowledge of legal meanings nor ready access to a law dictionary defining such terms.

A common dictionary — Webster's New Collegiate — defines the word "jurisdiction" as the legal power, right, or authority to hear and determine a cause or causes. This dictionary does not give a definition of the word equivalent to the intent of the Referee in his second use of it. Therefore, the average railroad man will read the award as if it says, "We have authority to decide the dispute and it will be dismissed for lack of authority to decide it", clearly an absurdity.

The Referee and his supporter or supporters among the Carrier Members may very well contend that they are not responsible for lack of knowledge on the part of those for whom we plead here. We contend that they are responsible for issuing clear decisions that tend to clarify rather than to confuse and thus implement the purpose for which this Board was created.

Moreover, there is a large body of awards, including two by this same Referee, which accomplish the very same result without a double use of the word "jurisdiction". Some of these awards are here listed: 4346, 5077,

6692, 10193, 10749, 10873, 11904, 12124, 12352, 13235, 13664, 14135, 14258, 14298, 14747, 14811, 15019, 15063, 15449, 15712, 15877, 15996, 16251, 16525, 16607. (This listing does not imply agreement with the findings as such, but only with the language used to express such findings.)

True, there are a few awards such as 10537, 14824, 14878, and now 18322, where the word "jurisdiction" is improperly used in cases where the findings were the same as here. We do not believe this list should be lengthened but, rather, those using more simple laymen's language should be followed where the circumstances require such a finding.

Significantly, most if not all of the awards cited above were adopted by vote of the Carrier Members and the Referees involved, indicating the strong probability that most of the Carrier Members have no quarrel with the views here expressed.

This dissent is not intended as questioning the Referee's knowledge or integrity. Rather, we think, he was overcome by what we consider to be an overzealous and supertechnical argument of one Carrier Member, especially in view of Awards 13235 and 15449, where he used plain laymen's language to express precisely the same decision as was made here.

C. E. Kief
Labor Member

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