

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Colorado & Southern Railway Company that, subsequent to the conference between the management and employes on October 15, 1947, as recommended by the National Railroad Adjustment Board in Award 3659 with respect to the necessity of reopening of the Lynn agency, the senior employe idle between the date of conference on October 15, 1947, and February 2, 1948, when the Lynn agency was closed, shall be compensated on the basis of a day's pay Monday through Saturday of each week, holidays excluded, during that period, at the rate of pay established for the Lynn agency position.

JOINT STATEMENT OF FACTS: Pursuant to Award 3659 of the Third Division, National Railroad Adjustment Board, parties hereto met in conference on October 15, 1947, and discussed the award, in effort to reach a satisfactory disposition of the case. Agreement was not reached.

The Organization contended that the position of Agent at Lynn station should be restored, bulletined and filled. As satisfactory arrangement was not consummated, the carrier then stated there was not sufficient work to justify maintaining an agency at Lynn and would take immediate steps, as required by Colorado state laws, to close the station. This was done by filing an application with the Colorado Public Utilities Commission.

Hearing was held by the Colorado Public Utilities Commission and, in due time, this Commission rendered its decision authorizing carrier to close Lynn station, effective February 1, 1948, which was done.

Pending decision of the Public Utilities Commission, Agent Aguilar (H. M. Trickey) continued to handle work at Lynn station until carrier was permitted to close Lynn station, effective February 1, 1948.

POSITION OF EMPLOYES: An agreement bearing date of June 16, 1924, as to rates of pay and working conditions is in effect between the parties to this dispute. The position of Agent-Telegrapher Lynn, Colorado, is shown at page 18 of that agreement.

As stated in the Joint Statement of Facts, pursuant to receipt of Award 3659 covering our complaint, because of the Agent at Aguilar being required to perform dual services in the handling of the Lynn agency, in addition to his own agency at Aguilar, the management and the representative of the organization met and discussed the award at length, but it was impossible to work out any satisfactory arrangement whereby the agreement would not be violated as it had in the past.

OPINION OF BOARD: On September 23, 1947 this Board adopted Award 3659, which sustained that part of Claim 3 in Docket TE-3623, reading:

"the carrier shall now be required to discontinue the said improper practice and restore the agent-telegrapher position at Lynn, Colorado, to the telegraphers' agreement as a separate position and bulletin and fill the position in accordance with the governing rules of the telegraphers' agreement,"

"with the reservation that the necessity for reopening of the Lynn agency be discussed by the parties before it is effectuated."

The parties met in conference on October 15, 1947, but reached no agreement.

The Carrier and the Railway Express Agency joined on October 28, 1947, in petitioning the Colorado Public Utilities Commission for authority to discontinue their agencies at Lynn; the Commission set the matter for hearing for December 18; and on January 12th entered an order for the discontinuance of said agencies, effective February 2, 1948.

The Claim here is that the senior employe under the telegraphers' agreement, idle between October 15, 1947 and February 2, 1948, be compensated on the basis of a day's pay, Monday through Saturday of each week, holiday excluded, during said period, at the rate of pay established for the Lynn agency.

The record in Docket No. TE-3623, upon which Award 3659 was predicated, discloses that there had been no agent telegrapher stationed at Lynn since 1933. The Carrier says, moreover, that there were no living quarters or lodging accommodations whatever at Lynn, and that if it had undertaken to reestablish the agency subsequent to the previous Award, it would have been necessary to have constructed a dwelling house to meet the requirements of Rule 23 (a) of the Agreement. Such a step would certainly have been ill-advised as long as the issue as to the reopening of the agency remained unsettled. These facts must have been known to this Board when Award No. 3659 was entered and, perhaps, explains the reservation found therein, to the effect that the agency should not be reopened until the matter was further discussed by the interested parties. Also known to the Board must have been the fact that the laws of the State of Colorado provide an orderly and effectual method of discontinuing unnecessary or unuseful local railroad stations, independent of any action taken by this agency. For these reasons we do not attach to the previous Award the self-executing finality that the Organization claims for it.

If the Carrier had not acted with diligence in going to the Utilities Commission for relief, following the unsuccessful conference with the Organization, there might be some reason for imposing a penalty, but less than two weeks elapsed between these steps. It may be further observed in that connection, that the relief granted by a public agency, such as a Utility Commission, ordinarily relates back to the conditions that existed when its jurisdiction was invoked—which, in this case, would be the date of the filing of the petition. On that view of the case the period of time for which the Organization has any basis for relief would, at most, be only from October 15 to October 28, 1947. Rule 38 (d) of the effective Agreement of June 16, 1924, provides:

"When vacancies occur, or new positions are created, they will be bulletined within five days * * * and will be filled within ten days thereafter * * *."

The period that elapsed between the unsuccessful conference of October 15th and the filing of the petition with the Utilities Commission on October 28, 1947, did not, therefore, afford the Carrier the time to fill the alleged vacancy to which the Rules entitled it, even if an attempt had been made to do so.

There is yet another reason why we would not be warranted in sustaining this Claim. The statement of the claim in Award No. 3659 asks for the re-establishment of the agency at Lynn and compensation for the agent-telegrapher at Aguilar for services performed at Lynn; but it asserts no claim for compensation on behalf of the position at Lynn, which the Organization contended had been wrongfully discontinued. This would justify the conclusion that the claim now being pressed had been waived.

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 thereon;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of January, 1949.