

Award No. 6202

Docket No. TE-6098

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas that:

(1) The occupants of the agency positions named in Rule 1(b) are employed as defined in Rule 1(a):

(2) The General Committee represents the employees occupying the positions of agent at the stations named in Rule 1(b) of the agreement between the parties, effective September 1, 1949.

EMPLOYEES' STATEMENT OF FACTS: An agreement on Rules and rates of pay governing working conditions between the parties to this dispute was in effect at the time this dispute arose effective September 1, 1947, a copy thereof is on file with this Board and is a ready reference; also the Schedule Agreement was revised September 1, 1949, which scope rule was not changed except to revise the list of supervisory agents, which is the subject of dispute, and Burkburnett, Texas; Gainesville, Texas; and Temple, Texas, were removed from the supervisory class, Rules 1 and 18, and placed under all the rules in the Agreement at a later date. On March 16, 1922, the Schedule Agreement was negotiated with the Carrier, Article 1(a), reading in part as follows:

"Note—A list of supervisory agents and part-time agents is appended hereto which it is understood may be revised from time to time, as conditions change."

On November 1st, 1924, Article 1(b), was negotiated, reading in part, as follows:

"These rules will not apply to the following supervisory stations, but it is understood may be revised from time to time as conditions change."

Section 2 Ninth of the Railway Labor Act provides, as follows:

"Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. * * * ."

Under the provisions of this Act the dispute as to who is representative of the Carriers' employees is one which exists only among employees. No such dispute exists at the present time among Carrier's employees as to whether The Order of Railroad Telegraphers or some other person or organization represents the craft or class of employees known as telegraphers.

By the provisions of the Railway Labor Act, should such dispute arise, the sole authority for its determination is vested in the National Mediation Board. As there exists no dispute to be determined, and as the sole authority to determine such matters is vested in the National Mediation Board, when such a dispute exists, the National Railroad Adjustment Board is without authority at law to determine the second portion of the Employees' claim, and it should be dismissed for want of jurisdiction.

Jurisdiction is the power to declare the law and when it ceases to exist the only function remaining in the Court is that of announcing the fact and dismissing the complaint. *Ex Parte McCradle*, 74 U. S. 506.

Proceedings in a tribunal without jurisdiction are void—*Ex Parte Reed*, 100 U. S. 13, 25 L.Ed. 538; *Northern Pacific S. S. Co. v. Industrial Accident Commission*, 23 F. 2d 109, and aggrieved party need not seek review, but at any stage may treat them as null and defend against trespass by their use—*Northern Pacific S. S. Co. v. Industrial Accident Commission*, 23 F. 2d 109.

There being no authority under law for the National Railroad Adjustment Board to hear and determine this matter, sole authority under law to hear and determine such matters being in the Interstate Commerce Commission, the only proper function in this Board is to dismiss this complaint for want of jurisdiction and any other action on the part of the Board will be void and a nullity.

The Carriers respectfully request the Board deny the complaint.

Except as expressly admitted herein, the Carriers deny each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

All data submitted in support of Carriers' submission, as herein set forth, have been heretofore submitted to the employees or their duly authorized representatives.

(Exhibits not reproduced).

OPINION OF BOARD: The claim states (1) the occupants of the agency position named in Rule 1(b) are employees as defined in Rule 1(a) and that (2) the General Committee represents the employees occupying the position of agent at the stations named in Rule 1(b) of the Agreement between the parties, effective September 1, 1949.

RULE 1 (a). These rules and working conditions will apply to Agents, Freight Agents, or Ticket Agents, Agent Telegrapher,

Agent Telephoners, Relief Agents, Assistant Agents, where they have charge of station, take the place of or perform the work of an Agent, Telegrapher, Telephone Operators (except Switchboard Operators), Towermen, Levermen, Tower and Train Director, Block Operators, Staffmen, Operators of mechanical telegraph machines, used for receiving and transmitting messages, Manager Wire Chiefs, Wire Chief Telegraphers, and Car Distributors where the position requires knowledge of the duties of telegrapher or the handling of messages by telephone (synonymous terms), all of whom are hereafter referred to as employees.

(b). The following stations are considered supervisory and are not subject to the rules of the agreement, except Rules 1 and 18:

St. Louis	Greenville (Freight)	McAlester (Freight)
Kansas City	Dallas	Denison
Parsons	Fort Worth	Sherman
Muskogee	North Fort Worth	Austin
Oklahoma City	Wichita Falls	Houston
Tulsa	Waco	San Antonio

RULE 18. Employees covered by these rules who are used in dispatchers' office or who desire promotion to train dispatcher or supervisory agent, not covered by these rules will be given preference over others where ability is sufficient and will retain their rights to their position for six (6) months, and at the expiration of six (6) months their position becomes vacant subject to Rule 2, Paragraph (a). In the event they desire to return to service covered by these rules on their seniority district they may do so after six (6) months, taking their place on the extra list with full seniority.

This claim poses two questions, which must be answered, if possible, by the language of the parties' agreement:

(1) Are occupants of the agency positions named in Rule 1(b) to be considered "employees" within the meaning of that term as used in Rule 1(a), as contended by the Organization, or are they excluded from the designation "employees" and considered to be "officials," as contended by the Carrier?

(2) Does the General Committee of the Organization represent the occupants of the positions at the stations listed in Rule 1(b)?

Rule 1(a) lists the classification of "Agent" and states that "all of whom are hereafter referred to as employees." We hold that "supervisory agents" come within the general term "Agent." Therefore, the parties have agreed that all Agents are referred to as employees. The significance of such a designation, however, must depend upon what the parties have agreed to with respect to these "employees" as they are specially enumerated in Rule 1(b). By clear and unmistakable language the parties have agreed that only Rules 1 and 18 apply to employees who occupy Agent positions at the stations shown in Rule 1(b). The significance of the term "employees," so far as it relates to those who occupy the positions covered by Rule 1(b), is strictly limited by the language of that rule to whatever benefits are conferred by Rule 18. Only Rules 1 and 18 of the Agreement apply.

Considering the foregoing, we conclude that occupants of the positions of supervisory agent at the stations named in Rule 1(b) are employees insofar as Rule 18 is concerned and the Organization represents them to that same extent.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That both parties to this dispute 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

AWARD

Claim disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 5th day of May, 1953.