

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad Company) that:

1. Carrier violated the agreement between the parties hereto when, on the 16th day of September 1953, and continuing thereafter, it removed the work of the position of (Depot) Ticket Agent, San Antonio, Texas, from the Scope of the Telegraphers' Agreement and assigned such work to one C. H. Schumacher, an outsider.
2. Carrier violated the agreement between the parties hereto when on the 16th day of September, 1953, and continuing thereafter, acting unilaterally, it changed the classification of the position of (Depot) Ticket Agent, San Antonio, Texas, to that of (Depot) Passenger-Ticket Agent, without the concurrence of Employees.
3. Carrier violated the agreement between the parties hereto when on the 16th day of September 1953, acting unilaterally, it arbitrarily and capriciously removed N. W. Chism from his position as (Depot) Ticket Agent at San Antonio, Texas.
4. Carrier violated the agreement between the parties hereto when on the 16th day of September 1953, acting unilaterally, it arbitrarily and capriciously, after removing N. W. Chism from his position as (Depot) Ticket Agent, caused and compelled him to perform duties on a position unilaterally created and designated by Carrier as night (ticket) agent.
5. N. W. Chism shall be restored to his position as (Depot) Ticket Agent.
6. After restoration of N. W. Chism to his position of (Depot) Ticket Agent, Carrier shall be required to bulletin the position of night (ticket) agent, and make assignment thereat as provided in the agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect an agreement between Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad Company), hereinafter referred to as Carrier or

by saying "for the reason that I was not agreeable to the proposed changes in the set-up at the San Antonio Ticket Office." Please note that he does not say that he contended that the proposed changes were not agreeable, but simply says "I was not agreeable." It is possible that he may not have been personally "agreeable" but he was informed concerning what the Carrier planned to do, and while he is a man who can state his position in no uncertain terms, he made no verbal statement or any contention that the proposed action violated the Agreement. He definitely agreed that the proposed change in starting time was proper under the Agreement. The statement quoted from the former Personnel Manager's letter of March 2, 1953 (page 13 herein) clearly and truthfully states the facts, with respect to the understanding. Certainly it is obvious to anyone that the Personnel Manager would not have made that statement to the General Manager if the General Chairman had even hinted that he would contend the proposed change in the set-up violated the Agreement or would be the cause of any claim or complaint whatever. The letter was written to inform the General Manager as to the results of the handling with the General Chairman.

The Carrier avers that the contemplated change which included the movement of the City Ticket Office force to the San Antonio Passenger Station, the change in the assigned hours of the ORT Ticket Agent, and the lightening of his supervisory duties, which were to be assumed by the Passenger Traffic Department, in taking over the supervision, were explained to the General Chairman of the ORT and that he made no contention that it violated the Agreement in any way.

It is, therefore, obvious that the present contention by the ORT is an effort on its part to have the Board set aside the rules of the Agreement, to invalidate the understanding had with the General Chairman, and to expand the scope of the Telegraphers' Agreement.

The Carrier therefore contends that:

1. The Telegraphers' Agreement has not been violated.
2. The Third Division, National Railroad Adjustment Board, should not assume jurisdiction without extending notice to representative of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees.
3. The claim filed with the Board is not the same claim that was handled on the property of this Carrier, and, if it otherwise had validity, it is not properly before the Third Division, as it was not handled as required by Agreements and the Railway Labor Act. It should therefore be dismissed.
4. The ORT now has one position in the consolidated office and has never had more than one position under the Scope of the Agreement.
5. No work came into the new office that had ever been under the ORT Agreement.
6. If jurisdiction is assumed, the claim should be denied in its entirety.

Carrier affirmatively states that all data contained herein has been made known to, discussed with, or is well known by Employees' Representative.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to September 16, 1953, the Carrier's San Antonio, Texas, ticket selling operations were carried on at two locations. On that date the two offices were consolidated at one location. No positions were abolished by the consolidation. Claimant N. W. Chism was a ticket

agent prior to the consolidation; he remained a ticket agent after the consolidation and his rate of pay remained unchanged.

While Claimant Chism's hours were changed, it is significant that by a supplemental agreement of April 1, 1953, the Parties classified his position as a "Star" Agency and, as such, the position became excepted from Rules 3, 4, 5, 7, 10, 11, and 21 of the effective Telegrapher Agreement. It need not be decided here whether any of these Rules, and in particular Rule 10 (starting time), would have restricted the Carrier's freedom to change the hours of Claimant's position prior to the supplemental agreement of April 1, 1953 for such restriction, if there was any, was removed when the position became a "Star" Agency. It should be noted also that prior to moving to San Antonio to fill his ticket agent position, Claimant Chism was informed by the Carrier that the position was to be changed to night hours.

While less supervisory responsibility is involved in the night position, Claimant Chism continued to exercise supervisory responsibility after the consolidation. The Employees themselves state that after the consolidation Chism "Had charge of ticket office during his tour of duty (part of the time there was one other ticket seller on duty and part of the time two ticket clerks)."

In view of the above considerations it must be concluded that the Carrier did not violate the Agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1957.