

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines) that:

1. Carrier violated the provisions of the current agreement between the parties when it required or permitted an employee classified and holding the position of "Wire Chief" to perform the regularly assigned duties of a "Mechanician" in "ED" General Telegraph Office, San Francisco, February 18 and March 5, 1953; and in "SW" General Telegraph Office, El Paso, March 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 1953.

2. As a result of the violations, the Carrier shall compensate the following employees for work denied: R. L. Hiatt, eight (8) hours at the time and one-half rate February 18, 1953; C. W. Homan, eight (8) hours at the time and one-half rate, March 5, 1953; A. L. Keesling, two (2) hours at the time and one-half rate, March 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 1953.

EMPLOYEE'S STATEMENT OF FACTS: There is in evidence a collective bargaining agreement between the parties, hereinafter referred to as the Telegraphers' Agreement. The agreement bears the date of December 1, 1944 (reprinted March 1, 1951, including revisions). Copies of this agreement and amendments are on file with your Board and are, by reference, included in this claim.

The dispute involves interpretation of the agreement and was handled on the property as prescribed by the Railway Labor Act, as amended, and in accordance with the usual handling of grievances. The claim was denied by the top ranking official of the Carrier and is now submitted to your Board for adjudication.

The Organization fully expected the Carrier to correct the conditions here complained about at these two General Telegraph Offices following a decision by your Board in Award 6704 involving a similar claim in "BD"

Rule 2 of the current agreement provides for the classification of employees and the rating of positions. There is nothing in that rule which even remotely applies to the instant claim.

Rule 3, "Basic Day," does not in any way support the claim submitted.

Rule 7 of the current agreement provides for the assignment of rest days, the filling of rest-day vacancies, and method of compensating employees performing service on their assigned rest days, which are not involved in this dispute.

Rule 14 of the current agreement merely defines overtime and provides the method of compensation. It lends no support to the claim in this docket.

Rule 16 of the current agreement outlines the method of compensating employees coming within the scope of the current agreement when they are notified or called to perform work not continuous with regular work period, or when said employees are required, after completion of their regular tour of duty and subsequent to the time released therefrom, to return for further service, or when required to report for duty in advance but continuous with regular work period. It is evident that Rule 16 is of no value to the petitioner.

Rule 20(f)-4, 5, of the current agreement sets forth the locations where general telegraph offices are maintained and the method for calling employees when it is necessary for overtime work. It was not necessary to work any overtime on dates here involved; therefore, Rule 20(f)4, 5, has no application to the instant dispute.

The petitioner is simply attempting to secure an award of this Division over and above that when was agreed to by the parties. Inasmuch as the petitioner's position cannot be sustained by any rule of the agreement, the carrier respectfully submits that within the meaning of the Railway Labor Act, the instant claim involves request for change in agreement, which is beyond the purview of this Board. To accept petitioner's position in this docket would definitely be tantamount to writing into the agreement a provision which does not appear therein and was never intended by the parties.

CONCLUSION

The carrier asserts that the claim in this docket is entirely lacking in either merit or agreement support; therefore, requests that said claim be denied.

All data herein submitted have been presented to the duly authorized representative of the employees and are made a part of the particular question in dispute.

The carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the petitioner in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization contends that on specified claim dates, claimant employees as named herein were holding assignments as

Mechanician at San Francisco and at El Paso. Both locations being admitted by the parties as General Telegraph Offices within the provisions of Rule 20, of the effective Agreement before us. Under this rule Wire Chiefs are under No. 1 classification. Mechanics are denoted as in classification No. 2. The claims are premised on the contention that on the dates alleged Wire Chiefs on duty performed certain work as shown in the record and resulted in depriving claimants of such work properly coming within the Mechanics classification. Rule 20 is a special rule and specifically sets out the classifications of the various employees coming under the Agreement at General Telegraph Offices.

Rule No. 20 makes no provision for a combination of work as between Wire Chiefs and Mechanics. Provision is made in classification No. 2 for a combination of positions of Mechanician-Assistant Wire Chiefs, under classification No. 5 a combination of Morse Telegraphers-Printer Machine Operators.

The work here performed by Wire Chiefs in our opinion is that properly coming within the provisions of the Scope Rule and Rule No. 20, and is work arbitrarily removed from the Mechanics and required to be performed by Wire Chiefs. The bulletin issued by Carrier on February 18, 1953, is evidence that such work as required of Wire Chiefs constitutes work not common to work to be performed as provided in classification No. 1 of Rule 20.

We are unable to determine from the record that any verbal agreement exists between the parties that would permit the work complained of here, to be performed by Wire Chiefs as contended by Carrier.

The claims should be sustained, with payment to be made on a pro rata basis as this Division has held in numerous previous awards.

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

That the parties waived hearing on this dispute;

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 Carrier violated the Agreement.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of October, 1959.