

Award No. 10874

Docket No. TE-9750

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on St. Louis Southwestern Railway Lines, that:

(1) Carrier violated the scope and other rules of the Telegraphers' Agreement when it failed or refused to fill the vacancy in the position of Agent at Stuttgart, Arkansas, with an employe from the telegraphers' seniority roster during the 26-day period, October 10 to November 4, both dates inclusive, 1956, and instead utilized and required an employe holding no seniority or other rights under the Telegraphers' Agreement to take charge of the station and assume the duties of Agent at Stuttgart during the said 26-day period.

(2) In consequence of its unwarranted action, and thus violating the terms of the Telegraphers' Agreement, the Carrier shall now be required to make redress in the form of pay at the Stuttgart agency rate of pay to Mr. Ovid Cook, the senior employe on the telegraphers' seniority roster not working during the 26-day period above stated.

EMPLOYEES' STATEMENT OF FACTS: Stuttgart, Arkansas, a city of some 8,000 population is located on Carrier's main line of railroad — Jonesboro Subdivision — approximately 34 miles north of Pine Bluff, Arkansas. It is the junction point of a 34 mile branch line serving Gillett, Arkansas, and intermediate stations. Stuttgart is served also by a branch line of the Rock Island Railroad.

Positions covered by the Telegraphers' Agreement at Stuttgart consist of the Agent on a monthly salary comprehending 208½ hours per month, and two hourly-rated clerk-telegraphers. In addition, there are some four or five clerical employes covered by the Clerks' Agreement at this station.

All station employes at Stuttgart are under the supervision and jurisdiction of the Agent.

Prior to September 12, 1940, the position of Agent at Stuttgart was not covered by any collective bargaining agreement. This position, together with five other similar agency positions, was, through the processes of collective

The Carrier has made every reasonable effort to dispose of the dispute, but the Employees have been adamant in their efforts to enlarge on the letter agreement, and settlement could not be reached.

The Carrier respectfully submits that the claim is not supported by the agreements and should be denied.

All data herein has been presented to representatives of the Employees in correspondence or in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case are, generally, undisputed. The Agency at Stuttgart, Arkansas, is one of six monthly rated agencies that were affected by the Letter Agreement of September 12, 1940, and came under the applicable Agreement to the following extent:

"3. Vacancies on the six monthly rated positions listed above shall be filled by appointment of employes from either of the Telegraphers' seniority rosters without regard to seniority. The hours of assignment and working conditions shall be in conformity with the hours of assignment and working conditions of supervisory agents."

On October 9, 1956, E. H. McClure, then Agent at Stuttgart resigned effective that date, thereby creating a vacancy at this station commencing on the morning of October 10, 1956. The Carrier required Chief Clerk R. R. Pullig (not an employe under the Telegraphers' Agreement) to take charge of the Station during a 26-day period, October 10, 1956, through November 4, 1956, at which time P. E. McCarty had been appointed and assumed the duties of Agent on November 5, 1956.

It is urged by the Petitioner that Carrier's requiring Chief Clerk Pullig to take charge of the Station and assuming the functions of an Agent during this period was in violation of the Scope Rule and number 3, of the September 12, 1940 Letter Agreement (heretofore cited).

The Carrier, on the other hand, contends that the station duties and responsibility of an Agent were not turned over to someone else at Stuttgart but that by the resignation of McClure the Carrier was deprived of an Agent at that point; it is further contended by the Carrier that it did not consider 25 days an unreasonable length of time to select an Agent for so important a station.

Award 5723 (Guthrie) involved a controversy between the same parties involved in this dispute. Though there is a slight and unsubstantial variation in the facts in the two matters under consideration, the issues and principles involved are identical. It was there held: "Therefore it seems clear that during the interim period the Carrier was obligated to fill the position until a permanent assignment was made from the ranks of the Telegraphers."

We are bound to conclude, under all the circumstances, that Award 5723 is controlling in the instant matter.

Furthermore, in a letter addressed to the General Chairman by the Manager-Personnel, we note the following:

“ . . . In my opinion the only reason that you could have valid basis for complaint in this instance is due to the length of time this position remained unfilled following resignation of former Agent E. H. McClure without advance notice on October 9, 1956, and I do not agree that you could have any valid basis for complaint beginning October 10, the day following the unexpected resignation of former E. H. McClure.” (Emphasis ours.)

This is, at least, a tacit concession that the Agreement had been violated, especially when we couple it with what followed. The Carrier insisted that it had a right to appoint employees from either of the Telegraphers' seniority rosters to fill vacancies on this assignment and that the Petitioner had no right to insist that any certain employee be paid when presenting a claim for an alleged violation when the position was not filled. In the furtherance of its position the Carrier then proceeded to name and make allowances to furloughed Agent C. M. Webster and Clerk Telegrapher C. I. Hughes indicating it was agreeable to Carrier for the Organization to name the Claimant to receive the payment that could have protected the Clerk-Telegrapher position.

The Petitioner refutes this contention of the Carrier, characterizing the attitude of the Carrier as being an arbitrary and unilateral one; that when the Agreement was violated the right to name the Claimant rested exclusively with the Organization.

We are committed to the view that, though under the Agreement the Carrier had the right to name as Agent any employee on the seniority roster, when a vacancy occurred where there has been a violation of the Agreement, it, the Carrier, has no right to name the Claimant.

Award 10575 (LaBelle) provides, in part, as follows:

“The essence of the claim by the Organization is for violation of the Rules of the parties' Agreement. The claim for the penalty on behalf of the individual claimant named is merely an incident thereto. That the claim might have been made in behalf of another having, as between them, a better right to make it, is of no concern to the Carrier. That fact does not relieve it of the violation and the penalty arising therefrom.”

It appears that during the processing of the claim the Organization had indicated that it was agreeable to having C. I. Hughes, a Telegrapher, receive part of the allowance. The Organization, on the contrary, has never contended that Agent Webster, a furloughed employee, designated by the Carrier, was a proper Claimant. The Petitioner being primarily concerned with having the Agreement upheld, any monies paid to C. I. Hughes by the Carrier should be credited against the total claim.

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 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 Agreement was violated.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1962.