

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Western Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Atchison, Topeka & Santa Fe Railway, that:

1. The Carrier violated the terms of the Agreement between the parties when, on July 6, 1959, it unilaterally declared abolished the position of first trick telegrapher-clerk at Clinton, Oklahoma and assigned a portion of the work of this position, and a portion of the work of the reclassified position of agent-telegrapher to a newly established clerk's position not covered by the Telegraphers' Agreement.

2. The work comprising the first trick telegrapher-clerk and the agent's positions at Clinton, Oklahoma, shall be restored to the Agreement and to the employees (telegraphers) to which it traditionally and contractually belongs.

3. Carrier shall compensate (a) V. A. Bailey on the basis of eight hours' pay at the rate of the first trick telegrapher-clerk position at Clinton, Oklahoma, each work day, for any loss in wages, in addition to pay at the time and one-half rate for any work performed outside the assigned hours of the first trick telegrapher-clerk position at Clinton; (b) D. D. Hosey, who was displaced, on the basis of eight hours' pay at the rate of the second trick telegrapher-clerk position at Clinton each work day for wages lost, in addition to pay at the time and one-half rate for any work performed outside the assigned hours of the second trick telegrapher-clerk position at Clinton, plus actual expenses incurred on each day he works at a station other than Clinton; (c) D. S. Vanvraken, who was displaced, on basis of eight hours' pay at the rate of the second trick telegrapher-clerk position at Attica, Kansas, each work day for wages lost, in addition to pay at the time and one-half rate for any work performed outside the assigned hours of the second trick telegrapher-clerk position at Attica, plus actual expenses incurred on each day he works at a station other than Attica.

held in its Awards Nos. 6701, 7309, 8673 and 8674 was the proper measure of penalty compensation to be assessed for an agreement violation.

Since the Employees have not in their handling of the instant dispute with the Carrier advanced the specific contention that the seniority displacements that occurred following the abolishment of Telegrapher-Clerk Position 6336 were violative of the displacement rules of the Telegraphers' Agreement, and the Carrier asserts that those displacements were in conformity with the agreement rules, it is obvious that the excessive penalties claimed in behalf of Messrs. Bailey, Hosey and Van Vranken in Item 3 is an attempt by the Petitioner to pyramid the penalties claimed and have the Board levy a fine against the Carrier, which the Third Division held in its Award No. 3651 it had no authority to do in the absence of a rule so providing.

Moreover, the penalty of "eight hours' pay" in addition to "pay at the time and one-half rate * * *" claimed in Item 3 of the Employees' claim in behalf of each Messrs. Bailey, Hosey and Van Vranken is an obvious attempt to assess the Carrier with a double penalty under two or more agreement rules for the same alleged violation.

In its Award No. 8004 the Third Division denied a claim in behalf of a second employe who was, like Messrs. Hosey and Van Vranken, referred to in Items 3 (b) and 3 (c) of the Petitioner's claim in the instant dispute, alleged to have been adversely affected by the handling which gave rise to the claim in behalf of the initial claimant, and held that it constituted a claim for a double or pyramided penalty. See also Second Division Award No. 2222.

The Third Division has also consistently held that penalties may not be pyramided and claimed under two or more agreement rules for the purpose of assessing the carrier with double penalties for the same alleged violation. (Awards Nos. 3146, 4710, 5333, 5652, 6021, 8004 and others.)

Attention is next directed to the Petitioner's claim for "actual expenses incurred" in behalf of Messrs. Hosey and Van Vranken in Item 3 (b) and (c) thereof in disregard of the Third Division's denial of similar claims for expenses incurred by reason of the alleged wrongful displacement of the claimants in Awards Nos. 2029, 4431 and 6024. See also Awards No. 1 of Special Board of Adjustment No. 305 and No. 46 of Special Board of Adjustment No. 29.

In conclusion, the Carrier respectfully asserts that the Employees have, in their presentation and handling of the instant claim on the property, failed to meet their burden of proof of an agreement violation and it is wholly without support under the agreement rules and should be either dismissed or denied for the reasons previously set forth herein.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in this case are substantially the same as those in Award 13074, Docket No. TE-12227, involving the same parties, the same Agreement, and basically the same contentions. For the reasons set forth in that award, we will find the Agreement violated and we will sustain the claims to the same extent that we did in that case.

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

Claims sustained with the same modifications as spelled out in Award 13074, Docket No. TE-12227.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November 1964.

**CARRIER MEMBERS' DISSENT TO
AWARD 13075, DOCKET TE-12263
(Referee House)**

For purpose of this dissent we adopt dissent to Award 13074 in Docket TE-12227.

W. M. Roberts
G. L. Naylor
R. A. DeRossett
W. F. Euker
C. H. Manoogian