

Award No. 13919
Docket No. TE-13120

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

SOUTHERN PACIFIC COMPANY
(Texas and Louisiana Lines)

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. The Carrier violated and continues to violate the terms of an Agreement by and between the parties hereto when on July 1, 5, 6, 13, 15, 20, 21, 26 and 27, 1960, it unilaterally removed from the scope of said Agreement and from the employes thereunder the work of preparing waybills and other duties incidental to the billing of freight at Knippa, Texas, work performed Monday through Friday by the Agent-Telegrapher at that location and delegated the performance of said work to an employe or employes at Uvalde, Texas, not covered by the parties' Agreement.

2. The Carrier shall restore to the scope of said Agreement and to the Agent-Telegrapher's position at Knippa, Texas, the above-described work, and,

3. Pay Mrs. E. J. Looper, Agent-Telegrapher, Knippa, Texas, regularly assigned at this one-man agency, a call for each of the dates set out in Part 1 hereof on which she was denied the right to perform said work, and,

4. Pay any other employe under the Agreement occupying the position of Agent-Telegrapher at Knippa subsequent of July 27, 1960, a call for each day said violation occurs or until Carrier restores said work to employes coming within the scope of the Telegraphers' Agreement. This to be determined by a joint check of Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto, effective December 1, 1946, and as otherwise amended.

within the limitations of the collective agreement in the interests of efficiency and economy. We find no violation of the rules in the present case."

This is substantially the same as our position in the instant case.

We, therefore, pray this case be given special consideration, as an effort on the part of Carrier to meet its service needs to the realities of the time. In this year 1962, it is necessary for us to handle our business in a progressive manner to take care of the needs of the shipper to the extent we can under our agreement. We have in nowise injured the employes by doing the work at a smaller station with one employe at a lower rate of pay. We have been doing it at a larger station with four employes, an agent-telegrapher and three clerk-telegraphers who are under the ORT Agreement and receive a higher rate of pay. In making this change, we are cognizant of the fact that some older decisions of the Third Division, NRAB, did not have the problems of 1962 before them. The idea that all work of a small station belongs to the agent was not based on any part of the Agreement, but on the announcement made by the Third Division many years ago, and we respectfully pray that this be kept in mind in reaching decision in this case.

OPINION OF BOARD: Prior to July 1, 1960, Mrs. E. J. Looper, the regular assigned occupant of the Agent-Telegrapher's position at the one-man station at Knippa, Texas, was used on a call basis on Saturdays and holidays when needed to sign bills of lading for cars of crushed rock sent by Southwest Stone Company for shipment. She also billed the freight shipments to various locations indicated on the bill of lading. After that date at Trap Rock, Texas, the location of the Southwest Stone Company, Carrier established a non-agency station and this company's business was handled through the Uvalde station instead of the Knippa station. Under this arrangement the plant manager of the Southwest Stone Company telephoned to the agent at Uvalde billing instructions concerning cars to be moved out of this company plant.

Claims are made by the Brotherhood in behalf of Mrs. E. J. Looper for a call on each date set forth in the claim and for other employes on the position of Agent-Telegrapher at Knippa subsequent to July 1, 1960, as well as for restoration of the work to the Agent-Telegrapher at Knippa on the grounds that Carrier violated the Agreement when it unilaterally and arbitrarily transferred the work from the Knippa station to the Uvalde station. It maintains that since all the work at the one-man station at Knippa is work covered by the Telegraphers' Agreement, and belongs exclusively to members of the telegrapher craft, Carrier violated the scope in transferring the work to employes for whom the Agreement was not contracted. It also asserts that Brotherhood's Exhibit No. 13 is a letter of settlement of this dispute which governs.

Carrier denies violation of the Agreement in the transfer of the work from Knippa to Uvalde and maintains that the work was not taken outside of the scope of the Agreement because members of the telegrapher craft perform it at Uvalde. It also submits that the letter (Exhibit No. 13), was merely a proposal of a conference upon which the parties did not act.

Although Brotherhood has contended that Carrier effected the transfer of the work from the one-man station to the larger station at Uvalde as a prelude to another of several attempts to close the Knippa agency, neverthe-

less, it must prove violation of the Agreement. At the Uvalde station there are four employes, an Agent-Telegrapher and three Clerk Telegraphers. We cannot assume unless supported by proof that employes other than these members covered by the Telegraphers' Agreement performed the work in question. The record offers no such evidence. Furthermore, the Agreement does not prohibit the transfer of work from one location to another.

The letter to which Brotherhood refers as a settlement of these claims was included as an exhibit, but this party did not use it in its arguments in the submission. Moreover, in the listing of exhibits, Petitioner designates this undated letter as "Carrier's proposal to settle claim." It is apparent that the parties did not accept the letter as an agreement, but regarded it as an offer for a proposal.

Award 6975, upon which Brotherhood relies, involved the same parties, location, and work, but is distinguishable from the instant case in that the work in dispute was performed by a conductor, an employe outside the Agreement.

In view of the stated reasons, we conclude that the Agreement was not violated.

We, therefore, hold that the Agreement was not violated.

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 Employes involved in this dispute are respectively Carrier and Employes 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1965.