



Award No. 14772

Docket No. TE-12968

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYES UNION
(FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)**

PANHANDLE AND SANTA FE RAILWAY COMPANY

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

1. The Carrier violated the terms of the Agreement between the parties when, without negotiation or agreement, on or about April 15, 1960, it unilaterally declared abolished the position of first shift Telegrapher-Clerk position at Lamesa, Texas, and assigned the work of this position to the reclassified position of Agent-Telegrapher.

2. Carrier further violated the Agreement (Article V of the August 21, 1954 Agreement) when the Superintendent failed to notify the representative filing and appealing the claim of his reasons for disallowing the claim.

3. Carrier shall now be required to compensate L. E. Landers for 8 hours' pay at the rate of the first shift Telegrapher-Clerk position at Lamesa each work day, in addition to pay at the time and one-half rate for work performed outside the assigned hours of the first shift Telegrapher-Clerk position at Lamesa, plus actual expenses incurred on each day he works at a station other than Lamesa.

EMPLOYEES' STATEMENT OF FACTS: Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

This dispute concerns the Carrier's unilateral abolishment of the first shift telegrapher-clerk position and reclassification of the agent's position to agent-telegrapher, without conference or negotiation, at Lemesa, Texas, and the transfer of work formerly performed by the agent and telegrapher-clerk to a clerical position not covered by the Telegraphers' Agreement.

Prior to April 15, 1960, the station force at Lamesa, Texas, was:

"January 17, 1961
26-E-161

Mr. L. D. Comer, Asst. Vice Pres.
The AT&SF Railway Company
Railway Exchange Bldg.
Chicago 4, Illinois

Dear Sir:

Please be referred to your letter file 135-251-18, December 16, 1960, concerning our claim in behalf L. E. Landers at Lamesa commencing on or about April 16, 1960.

We could cite several rules of the current Telegraphers' Agreement why the claim is in order, for instance, Article I (the scope rule), Article XXIX, the date effective and change rule; Article III, Section 3; Article III, Section 4 (the so-called suspend work rule) cited by District Chairman Bradley in his letters dated April 30, May 6 and May 18, 1960, addressed to Superintendent May, however, since Superintendent May failed to comply with Article V, Section 1(a) of the August 21, 1954 Agreement, the claim must be allowed as presented. Award 9492.

The Superintendent's statement that the claim 'was not supported by agreement rules' is a conclusion that must be reached by any Carrier representative before disallowing a claim, however, some reason or reasons for arriving at such a conclusion should be given the Employee representative.

It is noted that District Chairman Bradley addressed three letters to Superintendent May in a futile attempt to secure reasons for denial of the claim.

This is to advise you that your decision is not satisfactory and will be appropriately appealed.

Yours truly,

/s/ D. A. Bobo
General Chairman

DAB:mf"

OPINION OF BOARD: The Claim was filed on April 30, 1960, with the appropriate officer of Carrier. He replied: "Investigation develops that payment claim is not supported by Agreement Rules and is declined." The Claim was thereafter processed on the property by Petitioner, to the highest officer, on the basis that the Claim should be allowed as presented in that the reason given for declination did not satisfy Article V 1(a) of the August 21, 1954 Agreement.

The parties to an agreement are conclusively presumed to know its content. Where, as here, when in response to the Claim Carrier reasons that there was no violation of the Rules, Petitioner has the burden of specifying

the Rules which it alleges were violated—in effect it must submit a bill of particulars. Petitioner herein failed to satisfy this burden. We must, therefore, dismiss the 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 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

In failing to particularize the Rules allegedly violated, when it had the burden of doing so, Petitioner failed to perfect its Claim.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1966.