

Award No. 15143
Docket No. TE-12645

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

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

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

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

1a. Carrier violated the Agreement between the parties when on April 10, 1960, it failed and refused to bulletin and fill a vacancy on the position of agent at Strohm, Oklahoma.

1b. Carrier further violated the Agreement (Article V of the August 21, 1954 Agreement) when the Superintendent and General Manager failed to notify the representatives filing and appealing the claim of their reasons for disallowing the claim.

1c. For extra employes, J. D. Keeton, J. D. Cathcart, B. D. Webb, Donald L. Zachary, J. H. Wann, R. D. Sanders, and Paul Funk, the Carrier shall be required to compensate the senior extra employee named above who is idle for 8 hours' pay at the pro rata rate for each day the agency position at Strohm is not filled beginning April 10, 1960.

2a. Carrier violated the Agreement between the parties when on April 1, 1960, it failed and refused to bulletin and fill a vacancy on the position of agent at Bowring, Oklahoma.

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

2c. For extra employes J. D. Keeton, J. D. Cathcart, B. D. Webb, Donald L. Zachary, J. H. Wann, R. D. Sanders, and Paul Funk, the Carrier shall be required to compensate the senior extra employee named above who is idle for 8 hours' pay at the pro rata rate for each day the agency position at Bowring is not filled beginning April 1, 1960.

worked out satisfactorily.' Shortly thereafter, a bulletin was issued advertising the agency at Bowring.

Yours truly,

/s/ D. A. Bobo
General Chairman"

(Exhibits not reproduced.)

OPINION OF BOARD: The first issue raised in this claim is procedural in nature. The Organization contends that the Carrier failed to properly notify the representatives of their reasons for disallowing the claim.

The Superintendent denied the claim as follows:

"There is no violation of the Telegraphers' Agreement in this case and claim is, therefore, respectfully declined."

The General Manager said:

"It is our position that none of the rules cited by you have been violated, and the claim is respectfully declined."

These statements represent what we believe is a general denial. The Organization said the Carrier violated the agreement. The Carrier said it did not do so. Therefore, the case appears to be at issue. Perhaps the Organization should be more specific in the allegations it propounds if it is going to insist that the Carrier be more specific in the denial it asserts. We are not holding that a general denial will always suffice. But, we are saying that it is sufficient to meet the rule requirements when the violation is couched in general terms.

The merits of this claim involve the service of an agent at stations which operated during the so-called livestock seasons.

It appears that the Carrier engaged in several conferences and hearings with the Oklahoma Corporation Commission, concerning the closing of these stations for various periods of time. Finally on March 23, 1961, the stations were permanently closed.

The Organization bases the claim on what it terms a deviation by the Carrier of the orders of the Commission.

We are of the opinion that in order to prevail, the Organization would have to prove a violation of the collective bargaining agreement. We do not have the authority to order the stations to remain open, if there is no work to be performed.

The evidence in this case is clear and convincing that at the times in question, there was no work at these stations and no traffic was handled. There is no evidence that any work was performed. Consequently, we are unable to find a violation of the agreement. We will not presume to interpret or apply the rulings and orders of the local commission without a proper showing that the Agreement has been violated and the same are applicable thereby.

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 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 17th day of January 1967.