

Award No. 15217
Docket No. TE-12965

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway, that:

1. Carrier violated the Agreement between the parties when it used employes not covered by the Agreement to relieve on the position of Agent at Austin, Minnesota, while the regular Agent was on vacation February 4-24, 1960.

2. Because of this violation, Carrier shall compensate the senior employe, idle each day (extra in preference) except Sunday, on the Council Bluffs, Clarion and Mason City Districts during the period February 4-24, 1960, one day's pay for each day (except Sunday), at the rate of pay of the position of Agent, Austin, during that period. Rate of pay during that period amounted to \$21.47 per day. Claimants are as follows:

February 4	L. L. Johnson
February 5	G. E. Darling
February 6	L. O. Folkers
February 8	D. E. Farran
February 9	D. E. Farran
February 10	L. L. Johnson
February 11	L. L. Johnson
February 12	G. E. Darling
February 13	L. O. Folkers
February 15	R. M. Mostrom
February 16	R. M. Mostrom
February 17	L. L. Johnson
February 18	L. L. Johnson
February 19	R. M. Mostrom
February 20	L. O. Folkers
February 22	D. E. Farran
February 23	D. E. Farran
February 24	L. L. Johnson

acquiesced, and no good purpose can be served in re-hashing that at the present time. This is beside the point, as no amount or length of past practice can invalidate the clear terms of the printed rule.

It is obvious that this dispute cannot be settled on the property. Our alternative is to proceed in accordance with the Railway Labor Act.

Yours very truly,

/s/ L. M. Kingsbury
General Chairman"

OPINION OF BOARD: The supervisory agent at Austin, Minnesota, is a monthly rated position covered by Addendum No. 2, which provides, in part:

"In excepting Groups 1 and 2 positions from the application of Rule 22(i), it is understood that temporary vacancies of less than ninety (90) days need not be filled, but if filled, employees from the telegraphers' seniority rosters will be used."

During the absence of the agent while on vacation, the clerks performed routine work which the Organization argues constituted the filling of the agent's position; therefore, an employee subject to the Telegraphers' Agreement should have been used. We do not find that the agent's position was filled.

The Company simply exercised its right, as provided in the above quoted paragraph of Addendum No. 2, not to fill the position during the agent's absence, nor do we find that the performance of routine work "such as signing bills of lading, billing of outbound cars and checking of the yard" constitutes relieving the agent, as alleged.

The employees did not deny Carrier's statement that "such work at Austin is not reserved to the agent, but is regularly performed by clerks."

Since there is no proof that work reserved exclusively to the agent was performed by others, the Claim will be denied.

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 30th day of January 1967.

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