



Award No. 15725
Docket No. TE-13856

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad, that:

1. Carrier violated the Agreement between the parties when, prior to October 5, 1961, it required or permitted W. Y. Cusick, agent-telegrapher at Shamrock, Texas, and his relief employe, S. A. Atwood, to travel daily to Norrick, Texas, a distance of seven miles, to perform certain station work.

2. Carrier shall be required to pay to the above-named employes a day's pay of eight (8) hours at the minimum division telegraph rate, for each day so used during the period August 3 through October 4, 1961, plus reimbursement for automobile expense.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective August 1, 1947 (reprinted to include interpretations and special agreements to November 1, 1956), as supplemented and amended, is available to your Board, and by this reference is made a part hereof.

Shamrock, Texas, located on the Southern Division, Second District, of the Carrier's lines, is a one-man station. The position at Shamrock is classified as agent-telegrapher. The assigned hours of the position are 8:00 A. M. to 5:00 P. M. (one hour off for lunch), seven days per week. W. Y. Cusick is the regularly assigned agent-telegrapher working on the position Sunday through Thursday, with rest days Friday and Saturday. S. A. Atwood works the rest days (Friday and Saturday) of the Shamrock position as a part of his regular relief assignment, working two days at Shamrock and three days each week at Sayre, Oklahoma.

Norrick, Texas (not shown on Carrier's Time Table or on highway maps), about seven miles west of Shamrock, is a spur track for the use of a large carbon-black plant in the loading of cars. This plant handles a large number of carloads, and switching is required daily by Train No. 32, usually about 11:00 P. M., but sometimes later at night. The waybilling, accounting, etc., for this plant is done by the agent-telegrapher at Shamrock.

This will confirm the advice given to you in conference November 29, 1961."

6. Quoted here is the General Chairman's letter dated January 5, 1962, to the Vice President-Personnel:

"Your letter of December 18, 1961, File L-123-835, confirms your declination of our claim at Shamrock-Norrick, Texas, which you rendered during our conference in your office November 29, 1961. The claim involves the Carrier requiring or permitting W. Y. Cusick, Agent-Telegrapher at Shamrock, driving each work day to Norrick, a blind siding, a distance of seven miles one way, there leaving in the bill box waybills, etc., for eastbound trains in order to avoid the necessity of stopping at Shamrock to pick them up. This is a direct violation of Memorandum No. 7, pages 84 and 85, of the Telegraphers' Agreement.

As I understand your position, you decline the claim for 8 hours per day, plus automobile mileage, on the theory that Agent Cusick has for some time accepted payment of one hour per day overtime for this service, waiving other rules of the agreement, even though I believe you concur that there is violation of the contract, as charged. You stated the violation had been discontinued October 4, 1961.

I directed your attention to a similar case at Carlisle-Hartford, Iowa, where the Agent at Carlisle was required or permitted to drive to Hartford, a distance of about 5 miles one way, to check the yard at that point, which is now before the Third Division, National Railroad Adjustment Board, Docket TE-10815. I suggested to you that we be governed in the Shamrock-Norrick dispute by any decision the Board might render in the Carlisle-Hartford case.

You declined.

Your decision is rejected. This dispute will be further progressed."

OPINION OF BOARD: The facts are not in dispute. It is conceded that the rules of the Agreement, specifically, Memorandum No. 7, has been violated. The amount of compensation due Claimants, under the terms of the Agreement, as a result of this violation, must be determined.

This same basic claim on the same property, by the same parties, was decided by Referee Stack in Award No. 12345. The Board has had no hesitation in reversing prior Awards when convinced they are palpably wrong, but in the next analysis, the Board does not lightly regard precedent Awards. (See Award 11788-Dorsey.)

We cannot find Award 12345 palpably in error, under this prior holding, not requiring a penalty award. It is basic contract interpretation that present dockets as well as future dockets will be decided upon the rules of the Agreement applied to a given set of circumstances, peculiar to a given case.

Claim No. 2 will be denied for the reason that Claimants had acquiesced in this void arrangement for several years, being adequately compensated for their services. This differs from Award 12345 as to the time involved violating the Agreement, and, in our opinion, this long period of acquiescence by Claimants would estop them from attempting to enforce their particular claim through this Board in behalf of the Organization; for to sustain their claim would entitle them to unjust enrichment. Sufficient compensation has been paid to Claimants under the circumstances in the instant dispute.

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

Claim (1) sustained. Claim (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of July 1967.