



Award No. 16018
Docket No. TE-15097

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

SOO LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Soo Line Railroad, that:

1. Carrier violated the Agreement between the parties when on April 15, 16, 17, 23 and 25, 1963, it required or permitted employees not covered by the Agreement to handle messages of record at Valley City, North Dakota.

2. Carrier shall compensate the senior idle extra telegrapher in the amount of a day's pay (eight hours) for each day April 15, 16, 17, 23 and 25, 1963, and for each day subsequent to April 25, 1963 that violations of the Agreement as outlined above occur at Valley City. In the event there are no idle extra telegraphers on any date of claim. Carrier shall compensate the senior idle telegrapher nearest to Valley City in the amount of a day's pay (eight hours) for each such date or dates. Claimants to be determined by joint check of the Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective July 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

These claims arose out of Carrier's action of requiring or permitting an employe not subject to the Agreement to handle messages at Valley City, North Dakota.

Valley City, North Dakota, is a station where a telegrapher was formerly employed. The position was abolished by the Carrier on July 6, 1962. Prior to that time the telegrapher performed all the communication work, including the handling of messages, lineups and other reports. Effective July 6, 1962, and continuing thereafter, a clerical employe at Valley City proceeded to handle messages to and from this station by copying or transmitting same with the telegrapher at Rogers, North Dakota. Correspondence between the parties reflecting the handling of the claim on the property is attached hereto as ORT Exhibits 1 through 12.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: For many years Carrier maintained first, second and third trick operators at Valley City, North Dakota, in addition to a Supervisory Agent and other station forces. With the passage of time and changed conditions (fewer freight trains, discontinuance of passenger trains, etc.) Carrier reduced the number of telegraph operators employed there until July 6, 1962, the last telegraph operator's position was abolished.

On July 17, 1962, the Telegraphers' Organization demanded restoration of this position and filed claim on behalf of one Adrian L. Beecher for any loss in wages and expenses incurred as a result of abolishment of this position, compensation for all other telegraphers, down the line in seniority, for any loss in wages and any expenses incurred, and in addition claimed one day's pay for "the senior idle extra telegrapher on this division or in the event there was none, then a telegrapher idle on his rest day or in the event there was none, the senior off-duty telegrapher" for each day until the position might be restored.

This claim was progressed in orderly fashion up to the Director of Personnel, the highest officer for appeal on this property, where on November 12, 1962, it was denied. No proceedings were instituted to progress the dispute any further, and it died August 12, 1963.

On May 3, 1963, the Organization instituted what was purported to be a new claim. On that date the District Chairman for The Order of Railroad Telegraphers wrote the Division Superintendent alleging that the Telegraphers' agreement had been violated on April 15, 16, 17 and 23, 1963, and filed claims for one day's pay for each date on behalf of "the senior idle extra telegrapher; if none, then the senior regular telegrapher resting nearest to Valley City; if none, then the senior off-duty telegrapher nearest to Valley City."

As with the initial claim filed in July, 1962, it was contended that a continuing violation was involved and, therefore, the claimants' rights were fully protected by the filing of one claim.

The dispute arising from the May 3, 1963 filing was progressed ultimately to the Director of Personnel who declined it on August 30, 1963.

Copies of the correspondence in regard to the 1962 disputes are attached in exhibit form (Exhibits A through H) and made a part of this record.

Copies of the schedule agreement between the parties to this dispute, effective July 1, 1946, and supplements thereto are on file with the Board and are made a part of this record by reference.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 6, 1962 the Carrier abolished the position of Telegrapher at Valley City, North Dakota. On July 17, 1962 the Employes filed a claim complaining about that abolishment. That claim was allowed by the Employe to die without submission to us. The here-involved claim was filed on May 3, 1963 a few months before the 1962 claim died. This claim asserts that on certain days in April 1963 the Carrier violated the Agreement by permitting or requiring persons not covered by the Agreement to handle message of record.

The Carrier contends first that the abolishment of the Telegrapher position in 1962 is the common occurrence which gave rise to both claims; that the current claim is really just a part of the one which the Employees permitted to lapse, and that under Rule 32 it should be barred from consideration on its merits because it was filed more than sixty days after the occurrence on which, at bottom, it is based.

We do not agree. The lapsed claim arose out of the abolishment in 1962 of a position and it attempted to have that position restored; the current claim arises out of the handling by non-employees in April 1963 of communications work which Employees alleged is reserved for them by the Agreement, and seeks pay for employees covered by the Agreement for that work. We will deal with the claim on its merits.

On the merits, Carrier contends that, because none of them related to "the control of transportation," the communications involved were not the kind the handling of which is reserved for the Employees.

In determining whether communications, even if recorded, are of the kind the handling of which is traditionally reserved for the Employees, we said in Award 15779 (McGovern):

"The test to be applied is whether they were directly related to the control of transportation."

None of the communications appearing in the record of this case and about the handling of which the Employees have complained meet this test; thus we find that the Employees have failed to prove that work reserved for them by the Agreement was performed by employees not covered by the Agreement as they charged.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 21st day of December 1967.

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