

Award No. 16875
Docket No. TE-16054

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jan Eric Cartwright, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

SOUTHERN PACIFIC COMPANY
(Texas and Louisiana Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Pacific Company (Texas & Louisiana Lines), that:

1. The Agreement was violated and continues to be violated August 3, 1964 at Erath, Louisiana; August 12, 1964 at Lockport, Louisiana; on or about September 7, 1964 at Sulphur, Louisiana; and on or about September 14, 1964 at Patterson, Louisiana, without conference and agreement, Carrier unilaterally removed from the Employees' contract the work and duties normally and traditionally performed by the agencies at Erath, Lockport, Sulphur and Patterson, Louisiana, such as but not limited to expensing of waybills for carload freight and demurrage records, accounting, reporting and mailing out freight bills to patrons for collection (Carrier's instructions dated August 12, 1964 covering Erath, Lockport, Sulphur, et al.), transferring these duties and responsibilities to Avondale (New Orleans), New Iberia, Lake Charles, Morgan City, in violation of the parties' Agreement dated February 4, 1960 and Letter of Understanding dated February 23, 1961.

2. The work and duties improperly removed from Erath, Lockport, Sulphur, and Patterson, Louisiana agencies, in violation of the parties' contract shall be restored and thereafter retained by the agents in the seniority district affected.

3. Carrier shall be required by a sustaining award to compensate William Stutes, agent-telegrapher, Erath, Louisiana, or his successor, three (3) hours at the time and one-half rate daily, Monday through Friday, commencing Monday, August 3, 1964 and continuing each day Monday through Friday until the work and duties are restored to the seniority district affected.

4. Carrier will be instructed by an award of your Board to make a joint check of their records to determine who is entitled to compen-

sation at Erath and the date the work and duties are restored to the agents within the seniority district affected.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective December 1, 1946, September 1, 1949, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

At pages 17 and 18 of the Agreement effective September 1, 1949, under Rule 37 (Wage Scale) are listed, in the page order designated, the positions existing at Lockport, Patterson, Erath and Sulphur, Louisiana. They are listed below for your Board's reference:

LAFAYETTE DIVISION

Location	Title of Position	Hourly Rate of Pay
Lockport	Agent-Telegrapher	\$1.58
Patterson	Agent-Telegrapher	1.51
Erath	Agent-Telegrapher	1.61
Sulphur	Agent-Telegrapher	1.56

The above listings show: (1) that the Scope Rule classification, as well as the Wage Scale classification of positions at Lockport, Patterson, Erath and Sulphur is agent telegrapher. (2) That each is a one-man agency. (3) That the collectively bargained wage rate of the positions in the order named, on the effective date of said Agreement, was \$1.58, \$1.51, \$1.61 and \$1.56 respectively. By virtue of subsequent collectively bargained wage increases, the hourly rate of each position has been increased.

The date each position was negotiated into the Wage Scale and under the Scope and other rules of the parties' Agreement is not a part of the record. However, the record shows that Lockport, Patterson and Sulphur agency positions were covered by the Agreement between the parties effective September 1, 1914. The position of agent, Erath, appears in the parties' Agreement, effective September 16, 1924. These position listings have appeared in the Wage Scale of each subsequent Agreement negotiated between the parties to and including the current Agreement.

As a prelude to the eventual establishment of its regionalized accounting plan, insofar as the present disputes are concerned, on the Lafayette Division (seniority district), the Carrier entered into an Agreement with the Employees whereby "the territory of the present Houston Division, Englewood to Echo (not including Englewood), Beaumont to Port Arthur, Dayton to Baytown, and Beaumont to Lufkin (not including Lufkin), will be attached to the Lafayette Division." (Employees' Exhibit 1 was consummated May 23, 1958 to become effective July 1, 1958.)

While this Memorandum of Agreement, which consolidated in whole or in part separate seniority districts, is self-explanatory, the basic reason for such consolidation becomes clearly apparent as the facts of these disputes are revealed.

Historically, all accounting at on-line one-man agencies has, perhaps, from the very beginning of rail transportation been performed by the agent as in the instant cases. At agency stations other than one-man agencies, employees both

Settlement was not reached and Carrier granted extension of time limits for appeal to December 31, 1965. Carrier's Exhibit No. 4 reproduces the correspondence herein.

(Exhibits not reproduced.)

OPINION OF BOARD: In addition to the regular and formal contract Agreement, these parties have made an additional Letter Agreement.

In 1958 the Carrier undertook a consolidation or regionalization of its territories, with the approval of the Organization in respect to Seniority Districts. This project involved the attaching of certain territories to the Lafayette, Louisiana Division and is set out in a Memorandum Agreement of the parties which states that the Carrier planned to consolidate territories and effective with this the parties agreed upon a method of designating and protecting seniority and seniority districts in the new Divisions.

In 1959, the Carrier removed work from the Sulphur, Louisiana station and transferred it to the regional station located in Lake Charles. The Organization filed a claim with the Carrier alleging a violation of the Scope Rule of the Agreement.

Later in 1959, the Carrier removed work from the Erath, Louisiana Station and transferred it to the regional station located in New Iberia for handling. Again the Organization filed a claim with the Carrier alleging a violation of the Agreement. During this period of time or soon thereafter there appears to have been a similar transfer and a following complaint pertaining to the Patterson, Louisiana station.

Pursuant to the claims at Sulphur, Erath, Patterson and others not here involved, Carrier and the Organization entered into a Letter Agreement, dated February 4, 1960, which reads:

"TEXAS AND NEW ORLEANS RAILROAD COMPANY

Houston, Texas
February 4, 1960

Mr. H. Newman
General Chairman, ORT
708 Bettes Building
Houston, Texas

Dear Sir:

In settlement of Cases TE-59-14, TE-59-40, TE 59-105, TE-59-106, and regionalization cases pending covering the following stations: Patterson, Abbeville, Arnaudville, Breaux Bridge, Gueydan, Kaplan, Leonville, Youngsville, Broussard, Carencro, Sunset, Des Allemands, La Fourche, Mathews, Napoleonville, Paradis, Raceland, Raceland Junction, Schriever, Cheneyville, Washington, Eola, Berwick, Boeuf, Crowley, Hayes, Lake Arthur, Midland and Rayne, it is agreed:

1. To increase the rate of the star agent at New Iberia to base rate of \$567.18 per month.
2. Increase the base rate of the agent at Lafayette to \$532.62 per month.

3. Increase the base rate of the agent at Opelousas to \$508.76 per month.

4. Increase the base rate of the agent at Morgan City to \$508.76 per month.

5. To dispose of the question at Lake Charles in accordance with the agreement dated September 21, 1959, dualizing Lake Charles and West Lake.

6. Place the Assistant Agent, J. H. McCabe, at New Orleans under star provisions of the ORT Agreement at his present base rate of \$625.00 per month, at his present seniority date on that position, June 10, 1946. It is understood that Mr. McCabe, whose date of birth is December 28, 1904, will retire at age 65, and when the position is next filled, all subsequent appointees on this position will retire at age 65.

7. Work on the former Lafayette Division, suffix 'FY,' may be transferred from one regional station to another that is covered by this ORT Agreement, or may be returned to the individual station from which it came.

This agreement is made without prejudice to the position of either party and establishes no precedent and will not be referred to by either party in connection with any other case.

Yours truly,

/s/ E. B. Kysh
Mgr. of Personnel

ACCEPTED:

/s/ H. Newman
General Chairman, ORT"

(In the above Letter Agreement cases TE-59-14 and TE-59-105 pertain to claims at Sulphur and Erath.)

In addition to the Letter Agreement (2/4/60) the same parties made a Letter of Understanding, dated February 23, 1961, in connection with the previous settlements made on the regionalization cases of the Lafayette Division, which reads:

"TEXAS AND NEW ORLEANS RAILROAD COMPANY

Houston, Texas

February 23, 1961

Mr. H. Newman
General Chairman, ORT
708 Bettes Building
Houston 2, Texas

Dear Sir:

In connection with the settlements made on the Dallas Division regionalization cases today, and previous settlements at Austin,

Lafayette and Victoria, it is our understanding that the work on each of these Divisions will be retained by the agents in the seniority districts that are affected. For instance, if an agency is closed, the remaining agency work will be transferred to the nearest agency under the ORT Agreement and will be included in the records of that station. This will not interfere with the movement of traffic in an opposite direction which will be handled as in the past under provisions of the Accounting Department Instructions Circular 39-1.

The above understanding applies to the settlements at Victoria, New Iberia, Austin and Hearne, establishes no precedent and will not be referred to in connection with any other cases.

Yours truly,

/s/ L. C. Albert
Mgr. of Personnel

ACCEPTED:

/s/ H. Newman
General Chairman, ORT"

This Letter Agreement and the Letter of Understanding, must be read in connection with the Memorandum Agreement of 1958.

In September 1963, the Organization claimed a violation of the Letter Agreement (2/4/60), more particularly paragraph No. 7, by certain work being transferred from Lockport, Louisiana, a non-regional station to the regional station in Avondale, (New Orleans). The Carrier denied a violation. In September, 1964, another claim of the same nature was made by the Organization regarding Lockport. This time the Organization claimed that Lockport work was being sent to New Iberia, Louisiana (regional station), as well as to Avondale (New Orleans), both being in violation of paragraph No. 7. The Carrier again denied a violation.

On September 4, 1964, the Organization filed a claim with the Carrier alleging a violation of the Letter Agreement (2/4/60), particularly paragraph No. 7, when work was transferred from Sulphur, Louisiana (non-regional) to the regional station in Lake Charles. The Carrier denied a violation.

On September 14, 1964, the Organization filed a claim with the Carrier alleging another violation of the Letter Agreement (2/4/60), same paragraph, when work was transferred from Patterson, Louisiana (non-regional station) to the station in Morgan City; the Organization claimed that neither Morgan City nor Patterson were regional stations. The Carrier denied the violation, stating that the work was being handled at Patterson in the usual manner as far as the Carrier's business was concerned, but the Southern Pacific Transport Company (a trucking company) may have made some changes in its work, with which Carrier is not concerned.

On August 4, 1964, the Organization also filed a claim, containing the same complaints, concerning work being transferred from Erath (non-regional station) to the regional station in New Iberia and also a complaint that certain work previously assigned to an Agent in Erath had been transferred to a Clerk in New Iberia. Likewise, Carrier denied the violations.

Carrier contends that it may transfer work from a non-regional station to a regional station and that it may then transfer this work to another regional station or return the work to the original non-regional station. Carrier relies on Award 14038 of this Board which involved a similar Letter Agreement, but concerned transfers from a regional station to another regional station. The Organization contends that Carrier violated paragraph No. 7 of the Letter Agreement.

The Letter Agreement in dispute (2/4/60) was intended to settle disputes where work had already been transferred from certain non-regional stations to regional stations in the Lafayette Division and to allow, in the future, work on the former Lafayette Division to be transferred from one regional station to another or back to the original non-regional station. Therefore, the Board finds that the transfer of work at Erath, Sulphur and Patterson is not shown by the Organization to be in violation of the 1960 Letter Agreement as they contend, nor was sufficient evidence shown as to a violation of the original Agreement of the parties. As to Lockport, the Letter Agreement does not apply and therefore there can be no violation of it as contended, nor was sufficient evidence to show a violation of the original Agreement. In view of the evidence shown, the Board finds that there was not a violation and claim should 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 24th day of January, 1969.