Award No. 17168
Docket No. TE-16644

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

ST. LOUIS SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the St. Louis San Francisco Railway, that:

1. Carrier violated the Agreement between the parties when it changed Fort Leonard Wood, Missouri to a non-telegraph and/or non-telephone office but failed to remove all commercial and railroad telegraph instruments and/or railroad telephone instruments used by railroad employees within ten days.

2. Carrier shall immediately remove all such instruments from the station of Fort Leonard Wood, Missouri.

3. Commencing with September 13, 1964, and continuing each day until such instruments are removed from that station, Carrier shall compensate the senior idle telegrapher, extra in preference, in the amount of a day's pay at the scheduled rate for telegrapher, Fort Leonard Wood.

EMPLOYES' STATEMENT OF FACTS: Copy of the Agreement between the parties effective May 16, 1928, revised effective May 16, 1953, and as further amended and supplemented, is available to your Board and by this reference is made a part hereof.

On September 2, 1964, the only position under the Agreement maintained at Fort Leonard Wood, Missouri was abolished. The station at that location thus became a "non-telegraph and/or non-telephone office," as contemplated in the Agreement.

On a date not disclosed in the record, but presumably in May or June of 1965, the telegraph and telephone instruments at the station involved were removed from the former "telegraph and/or telephone" office. However, a railroad telephone instrument "used by railroad employes" continues to be maintained and used in another office at the Fort Leonard Wood station. The latter office is variously referred to in the record as the "ticket office and truck office," the "office of the Frisco Transportation Company," the "ticket-truck office," etc.

In view of the Carrier's failure to remove the telegraph and telephone instruments from Fort Leonard Wood station offices within ten days

following the closing of the telegraph-telephone office, as required by the Agreement, the General Chairman on September 17, 1964 filed claim essentially as that appealed to your Board. Claim was denied on October 12, 1964 and, subject to extensions of time limits as noted in the record, subsequently handled on appeal in the usual manner. Claim was discussed in conference on June 3, 1965 and December 2, 1965 with the highest carrier officer designated to handle disputes of this nature.

Other facts are revealed in correspondence exchanged by the parties during the handling of this claim on the property. Copies of that correspondence are appended hereto as TCU Exhibits 1 through 27.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Geographically, that portion of the Carrier's line from St. Louis, Missouri (MP 1) to Springfield, Missouri (MP 239) is a part of the Carrier's Eastern Operating Division. This portion of the Eastern Division is composed of two operating subdivisions, namely, the Rolla Subdivision which extends from St. Louis to Newburg, Missouri (MP 119) and the Lebanon Subdivision which extends from Newburg to Springfield. Bundy Junction, Missouri (MP 121) is located on the latter subdivision at a point about two miles southwest of the district terminal at Newburg. Bundy Junction is the point where the Government-owned branch line serving the military installation at Fort Leonard Wood connects with this Carrier.

Fort Leonard Wood is located 19.5 miles east of Bundy Junction.

Fort Leonard Wood covers a land area of approximately 71,000 acres. The Fort has a concentrated populated area numbering about 24,000 military, 12,000 dependents and 2,800 civilian employes.

There are numerous buildings within the Fort, but only two are involved in this dispute.

First, Building 2315 is located at a point on the east side of the Fort adjacent to its railroad yard. This is the building where the telegrapher was located prior to September 2, 1964.

Secondly, Building 2102 is located toward the center of the Fort, about one mile east of Building 2315. This building is used to house Post transportation offices and is occupied by military, bus, air and Frisco Transportation Company (FTC)[1] transportation personnel and the railroad ticket clerk-cashier.

This dispute presents the question of whether Article XIII and the understanding thereunder applicable to Fort Leonard Wood obligated the Carrier to remove certain Government-owned telegraph and/or telephone instruments from Buildings 2315 and 2102 within ten days after discontinuance of telegrapher position on September 2, 1964.

OPINION OF BOARD: One of the arguments presented herein is that the Carrier has introduced facts which were not presented on the

[1] FTC is a corporate subsidiary of the Carrier, engaged in the business of the common carriage of frieght by highway motor truck.

property. Surmounting this obstacle, the parties are in agreement on some of the facts contained in the submissions. Briefly, the instant claim is postured on the Organization's contention that on September 2, 1964, the Carrier abolished the position of telegrapher at Fort Leonard Wood and closed the telegraph office located there. Further, that Article XIII of the effective Agreement requires the Carrier to remove all commercial and railroad telegraph instruments and/or railroad telephone instruments used by railroad employees within ten days. That the General Chairman by letter of September 22, 1964, granted the Carrier a grace period for removal of such instruments. Although the Carrier alleges that the instruments were removed from the telegraph building on October 11, 1964, the Organization contends it was not apprised of such and it only became aware of said removal in May or June, 1965.

However, the crux of this dispute is predicated upon the fact that a railroad telephone instrument remained "in service in the ticket office and truck office at Fort Leonard Wood, offices separate and apart from the Telegraph office." This telephone, as alleged by the Organization, "is used by railroad employees, specifically and consistently by the ticket clerk employed at that location by the Frisco Railroad, as well as by other employees such as the Frisco Transportation Company employees and by other railroad employees who have occasion to use such telephone from time to time. Article XIII will not have been complied with unless and until all railroad telephones have been taken out of the station of Fort Leonard Wood including the telephone located in the ticket office at Fort Leonard Wood."

The Carrier, in turn, denied the claim on the ground that Article XIII has no application to the telephone located in the second building and used by the ticket clerk and others.

Thus, on the record before us, the Carrier concedes that a telephone is used in another building, but rejects the Organization's contention that this telephone is covered by Article XIII. At the outset, we are of the opinion that the General Chairman's letter of September 22, 1964, granted the Carrier an extension of time beyond the ten day requirement of Article XIII. Hence, this aspect is removed as an issue herein.

The next question, therefore, raises the issue as to whether the Carrier was obligated to remove the telephone from the second building pursuant to Article XIII. Unquestionably, the intent of Article XIII was designed to prevent the Carrier from circumventing the thrust of same, by permitting other employees to perform work of the Organization involved herein. While we are not wholly convinced that this Article was designed to be utilized for the type of claim represented herein, nevertheless, we are constrained to recognize that, technically, Article XIII was violated. However, there is not a shred of evidence to support a claim for damages. Nowhere within the docket is there contained a single statement to the effect that other employees are performing work of this craft.

In view of the failure by the Organization to support any claim for damages, we are constrained to hold that on the facts contained herein, the Carrier has not complied with Article XIII. We are, further, compelled to hold that there is no basis for payment of damages. In this regard, Item 3(a) of the Interpretation of July 25, 1942, is applicable to the senior

idle extra telegrapher and not to the senior idle telegrapher, extra in preference.

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 Employes involved in this dispute are respectively Carrier and Employes 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 to the extent indicated per Opinion.

AWARD

Claim sustained as to Item 1 and 2. Claim denied as to Item 3.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1969.

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