



Award No. 17195

Docket No. TE-16163

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Morris L. Myers, Referee**

**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**  
**MISSOURI PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Employees Union on the Missouri Pacific Railroad (Gulf District), that:

1. Carrier violated Rule 18 of the Telegraphers' Agreement when, it unilaterally required telegrapher D. L. Wood to work off his seniority district No. 1, i.e., Palestine-San Antonio Division, to perform service on District No. 3, i.e., Kingsville Division, between January 18, 1965 and including January 29, 1965, at Angleton, Texas, as agent.
2. Carrier shall compensate senior idle agent-telegrapher 8 hours pro rata rate for each of the following dates: January 18th, 19th, 20th, 21st, 22nd, 25th, 26th, 27th, 28th, 29th, 1965. Agent-telegrapher shall be one who carries and holds seniority on the Kingsville Division, due compensation for this violative action.
3. Carrier shall compensate agent-telegrapher deprived of this work at the rate of six percent per annum on all sums due and withheld as a result of this violation.

**EMPLOYEES' STATEMENT OF FACTS:** Angleton, Texas is located on the Kingsville Division of the Missouri Pacific Railroad, 51 miles southwest of Houston, Texas. There is one position under the Agreement at this point, that of agent-telegrapher. The agent-telegrapher is assigned work Monday thru Friday with rest days of Saturday and Sunday, and has assigned hours of 8 A.M. to 5 P.M., with a meal period of twelve noon to 1 P.M.

A vacancy occurred on the position in question and due to the Carrier's failure to provide adequate extra board the Chief Dispatcher in Houston and the Chief Dispatcher Cunningham in Palestine, Texas jointly arranged without notice or authority with the Organization for extra telegrapher D. L. Wood, who has seniority on the Palestine-San Antonio District No. 1, to fill the vacancy at Angleton, which is located on the Kingsville Division District 3.

Claim was filed in behalf of the senior idle agent-telegrapher on the Kingsville Division for the work beginning January 18, 1965 and including

such occasions the clerk retains the clerk seniority and at the same time accumulates telegrapher seniority until such time as they are needed as a clerk and are unable to respond at which time they must forfeit their clerical seniority.

6. A conference was held by the parties April 5, 1965, and a letter of confirmation was written the General Chairman dated April 12, 1965, which is quoted below for the Board's convenience.

"Mr. R. T. Phillips  
General Chairman—ORT  
P. O. Box 456  
Palestine, Texas 75801

"Dear Sir:

"In conference with Mr. Johnson on April 5, 1965, at which Mr. J. S. McMahon, General Secretary-Treasurer, and Mr. C. T. Woolsey, Labor Relations Assistant, were present we discussed claim in behalf of senior idle Agent-Telegrapher for eight hours' compensation at the pro rata rate for January 18, 19, 20, 21, 22, 25, 26, 27, 28 and 29, 1965, account Telegrapher D. L. Wood was used to relieve Mr. G. E. Boice, Agent, at Angleton, Texas, while the latter was laying off account of illness.

"In our letter of March 29 declining the claim in behalf of 'senior idle Agent-Telegrapher' we called your attention to the fact that the Carrier has a right to hire a new employe to fill a necessary vacancy or to employ the services of a furloughed telegrapher from another seniority district who otherwise would be unemployed.

"During the conference we referred you to Rule 18 of the Telegraphers' Agreement which provides that the seniority of an employe shall date from the time the first compensated service is performed upon last entering the service of the Carrier, and that seniority shall extend over the seniority district as defined herein in accordance with the district upon which the employe is located.

"It has generally been the policy of this Carrier to first offer employment to its own employes who are out of work before hiring new employes. We think this is fair and reasonable and is in step with public policy, and the policy of the Railroad Retirement Board as well.

"There is no provision in the Telegraphers' Agreement which prohibits an employe from securing and accumulating seniority in more than one seniority district so long as this does not violate the rights and obligations of the parties.

"For these reasons we can find no justification for changing the decision given to you in our letter of March 29, 1965.

"Yours truly,

"B. W. Smith"

**OPINION OF BOARD:** The facts giving rise to the claim in this case are as follows:

Mr. G. E. Boice, who was the regularly assigned agent at Angleton, Texas, did not occupy his position from January 18, 1965 through January 29, 1965 because of illness. The Carrier, without notice to or agreement with the Organization, assigned Mr. D. L. Wood to fill the vacancy during the above-stated period.

Mr. D. L. Wood at the time of his assignment to work at Angleton was a furloughed extra telegrapher on the Palestine-San Antonio Division Seniority District (Seniority District No. 1). The Angleton, Texas position that Mr. D. L. Wood occupied during Mr. Boice's illness is on the Kingsville Division Seniority District (Seniority District No. 3).

The Organization's claim is that it was violative of the Agreement to assign a telegrapher, even if on furlough, from one Seniority District to perform work in another Seniority District without prior agreement between the Carrier and the Organization. The Organization in the claim asks that the Carrier "compensate senior idle Agent-Telegrapher" pro rata for the days that Mr. Wood worked at Angleton plus interest at the rate of 6% per annum.

The Carrier asserts a defense on the merits of the claim that it is not violative of the Agreement to utilize a furloughed telegrapher from one Seniority District to occupy a telegrapher position in another Seniority District instead of having to hire a new employee in the latter Seniority District to occupy the position.

The Carrier asserts another defense to the claim—namely, that this Board should not decide this claim on its merits because the Organization has failed to prove the existence of any "employee involved" as required by Article V of the August 21, 1954 National Agreement, which Article reads as follows in pertinent part:

"Article V

"1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved. . . ."

The claim is clear that the "employee involved" is the one who was the "senior idle Agent-Telegrapher" on Seniority District No. 3 on the respective days that Mr. Wood worked at Angleton. If there were no dispute that such an employee existed, the fact that he was not named in the claim would constitute no defense to the claim by the Carrier. However, that is not the situation in this case.

While the dispute in this case was on the property, the Carrier consistently took the unequivocal position that there was no idle Agent-Telegrapher on Seniority District No. 3 on the days in question. By letter of February 4, 1965 from the Carrier to the Organization, the Carrier asserted that at the time Mr. Wood was assigned to work at Angleton the "list of extra telegraphers on Kingsville Division was exhausted". The Carrier made

again in its March 29, 1965 letter to the Organization, the Carrier stated, "The facts involved indicate that Agent Boice at Angleton laid off account the same assertion in its February 20, 1965 letter to the Organization. Yet illness; and, since it was essential to fill the temporary vacancy occasioned thereby, the Carrier attempted to locate an available telegrapher holding seniority on the Kingsville Division to fill this temporary vacancy, but none were available as all were working" (Emphasis ours). The March 29, 1965 letter concluded with this statement, "Without waiving the foregoing, in any event, there can be no basis for claim in behalf of an 'idle' Agent-Telegrapher because none were idle on the Kingsville Division".

It is true that the Organization in its March 31, 1965 letter to the Carrier asserted, "There were several idle telegraphers on the days in question holding seniority rights on the Kingsville Division who should have been permitted to protect this vacancy". However, that assertion was no more than a reiteration of its original claim on behalf of the "senior idle Agent-Telegrapher" on the Kingsville Division. Since the Carrier had several times stated that there was no such person since no extra telegraphers on that Division were idle, it was incumbent upon the Organization to name the extra telegrapher or telegraphers that it alleged was or were idle on the days in question, and its failure to do so is fatal to the claim.

We believe that more than a technical defense is involved in regard to the lack of satisfying the requirements of Article V 1(a) of the August 21, 1954 National Agreement. When it became apparent to the Organization that the Carrier did not believe that there was an idle telegrapher on Seniority District No. 3 during the period in question, the Carrier was entitled to know whom specifically the Organization was making the claim on behalf of, so that it could make the defense, if true, that the telegrapher named by the Organization was not in fact idle. As stated by Referee Ives in Award No. 14468, when a claim is filed on behalf of unnamed employees, "they must be identified in such a manner as to prevent a further controversy concerning their identity". Referee Ives went on to state, "The burden is upon Petitioner to prove by evidence in the record that the identity of the employees involved is known to the Carrier". (See also Award No. 11372.) Thus, in the circumstances of this claim and in light of the position that the Carrier took on the property regarding it, the Organization did not meet the requirements of Article V 1(a) of the August 21, 1954 National Agreement, and the claim, therefore, will be dismissed.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1969.