



Award Number 17365

Docket Number TE-16545

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, 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 26(b) of the Agreement when on the 3rd day of June 1965, it unilaterally ignored Agent-Telegrapher Bonnie D. Pearson's request for additional force to handle a voluminous perishable movement at Rio Grande City, Texas, which culminated in Mrs. Pearson becoming over-exhausted and incapacitated from June 4th to June 25th, 1965.
2. Carrier shall compensate Agent-Telegrapher Bonnie D. Pearson eight (8) hours pro rata pay plus all express commissions handled at this station during and including each day, namely, June 4, 5, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23 and 24, 1965. A total of eighteen days at \$22.12 each day, totaling \$398.16, plus express commission earned at this station during this period.
3. Carrier shall additionally compensate Agent-Telegrapher B. D. Pearson six percent interest on all sums due and withheld as a result of this violation.

EMPLOYEES' STATEMENT OF FACTS: On June 3, 1965 during the peak of the cantaloupe season at Rio Grande City, Texas, Agent-Telegrapher Bonnie D. Pearson completed her duty within the assigned hours of 8:00 A.M. to 5:00 P.M. Prior to and on June 3, 1965, Mrs. Pearson had called upon Trainmaster G. D. Richey for additional help due to the unusual heavy movement of cantaloupes. Trainmaster Richey on each occasion informed Mrs. Pearson that we have no available employees. On the date in question, June 3, 1965, when it became evident that seventy carloads would move out that night, Mrs. Pearson again called Mr. Richey and was informed that we have no available employees. Mrs. Pearson stayed at her post and continued to perform the work of signing bills of lading, waybill and seal carloads of cantaloupes until 10:00 P.M. At about 10:00 P.M., Mrs. Pearson was found unconscious in the office slumped over her work. She was rushed to a hospital at Harlingen, Texas and it was determined that her condition was from overwork and sheer exhaustion.

OPINION OF BOARD: Claimant was an Agent-Telegrapher at Rio Grande City at the time of the incidents which gave rise to this claim. On June 3, 1965, after she had completed her regular assigned hours of 9:00 A.M. to 6:00 P.M., she continued on duty, because of a heavy movement of cantaloupe carloads, requiring her continuing activities in signing bills of lading, waybill and seal carloads. The record shows that there were 75 cars to be handled that night; the number had not exceeded 11 per day up to May 24; on May 24 it was 18 and then on successive days, 21, 41, 48, 39, 35, 30, 36, 41 and 49 (on June 2nd, the day before the subject incidents). Claimant was concededly the only Agent-Telegrapher on duty.

It is undisputed that at about 10 p.m. on the evening of June 3, 1965, Claimant became ill on the job and was taken to a hospital at Harlingen, Texas, and that it was subsequently reported by a Dr. D. E. Schultz that Claimant was suffering from emotional and physical exhaustion. It is also undisputed that Claimant remained ill and out of work for eighteen work days.

The claim here in controversy is for eighteen days' pay, plus express commission, which Employees contend was lost by Claimant because of Carrier having "overworked" and "unjustly treated" her, within the meaning given those words in Rule 26(b):

"When an employe considers himself overworked or that he has been unjustly treated, his complaint shall be investigated by the Carrier and the Organization and if found justified relief shall be granted. If satisfactory settlement of the issue is not made locally it may be handled on appeal in the usual manner."

Carrier rejects the claim on the grounds that Claimant has been neither overworked or unjustly treated, that there is no obligation in the Agreement to provide payment to employes who are off duty because of illness and because the facts do not bring the claim within the purview of Rule 26(b) or demonstrate a violation thereof.

The record reveals a number of unresolved factual conflicts between the parties.

Our examination of these factual conflicts discloses in one of them a critical deficiency in Claimant's case. There is absent probative support for a showing that there was an express "complaint" within the meaning of Rule 26(b), to which Carrier in turn failed to respond by not joining with Organization in investigating and if sustained, alleviating.

Absent such a showing, it cannot be either said that the situation before us is governed by Rule 26(b) or demonstrates a violation of said rule. These burdens of proof are on the Claimant. They have not been met.

Rule 26(b) requires a first-instance joint investigation by Carrier and Organization when there has been an allegation of overwork or unjust treatment. Also, its ultimate remedy is addressed to "relief". This is clearly a reference to alleviation of the situation complained of.

In the instant situation, (a) the claim before us is not a request for relief or (b) a proved case of relief demanded, or (c) of failure to move jointly for investigation in the face of such a proved demand, or (d) denial of "relief" when there had been such a demand, such an investigation and a finding for the need of relief.

In the face of conflict of fact in the record and absent supportive proof to conform the situation to any of the foregoing, we must dismiss the claim without reaching other considerations raised.

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.

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 1st day of August 1969.