



Award Number 17531

Docket Number TE-17527

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES
UNION**

FORT WORTH AND DENVER RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Fort Worth and Denver Railway, that:

1. The Carrier violates the Telegraphers' Agreement at Silverton, Texas, when it requires and/or permits a non-telegraph agent to transmit communications of record and receive communications of record.
2. The Carrier shall compensate non-telegraph Agent J. R. Myers and subsequent incumbents at Silverton, Texas, for the difference between the non-telegraph rate of this position and the agent-telegrapher's rate of the position prior to August 2, 1966, for each and every day the Agreement is violated commencing on August 2, 1966, and continuing thereafter until such violation is discontinued.
3. The Carrier shall permit joint check of records to ascertain number of days and amount due.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties, effective December 1, 1955, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was timely presented, progressed to the highest officer designated by the Carrier to receive appeals, including conference in accordance with the terms of the Agreement, and has been declined. The Employees, therefore, appeal to your Honorable Board for adjudication.

This claim arose when Carrier reclassified the position of agent-telegrapher, Silverton, Texas, to that of a non-telegraph agent and continues to require the incumbent of the position to transmit and receive various communications by use of the commercial telephone.

rapher rate was paid to the incumbent of the Silverton agency until September 13, 1966. There can, therefore, be no claim "for the difference between the non-telegraph rate of this position and the agent-telegrapher's rate of the position prior to August 2, 1966" because the carrier paid the "agent-telegrapher's rate" until September 13, 1966 when the position was reclassified to a non-telegraph agency.

This deficiency was not corrected when the District Chairman appealed the Auditor's decision to the Superintendent in letter dated November 1, 1966. Copy of this letter is attached as Carrier's Exhibit No. 4.

The Superintendent declined the District Chairman's appeal in letter dated December 22, 1966, copy attached as Carrier's Exhibit No. 5, and pointed out that the agent-telegrapher rate was paid to the incumbent of that position until September 13, 1966 when another man was assigned to it. The Superintendent also pointed out that there was nothing in the claim or in the District Chairman's appeal which specified the alleged violation of the current agreement.

The agency at Silverton, Texas was changed from an agent-telegrapher to a non-telegraph agency effective September 13, 1966. Even though the petitioner steadfastly adhered to the claim date of August 2, 1966 and subsequent dates, it was not able to present anything that might have occurred upon which to base a claim until the General Chairman appealed to the carrier's highest designated officer in letter dated February 16, 1967, copy of which is attached as Carrier's Exhibit No. 6. Therein the petitioner quoted two alleged messages dated at Silverton, Texas, October 12, 1966. That is the only date and circumstances mentioned in this claim during its handling on the property.

The carrier's highest designated officer declined this claim to the General Chairman in letter dated April 4, 1967 which has been previously referred to and attached hereto as Carrier's Exhibit No. 1.

If there were any violation of the agreement at all—and the carrier does not concede that there was a violation—it could only center around the type of informational message dated October 12, 1966 quoted by the General Chairman in his letter of February 16, 1967, but that date was not specified in the claim as initially filed and appealed.

(Exhibits Not Reproduced)

OPINION OF BOARD: The issue, as stated by the Organization: "Does the Agreement permit Carrier to require a non-telegraph agent to perform communication service without compensating him at the agent-telegrapher rate of pay?"

The Organization relies on Rule 1—Scope Rule, Rule 2, Rule 3 and Rule 26 as being violated by Carrier herein.

The facts are that the agency at Silverton, Texas was changed from an agent-telegrapher to a non-telegraph agency effective September 13, 1966.

The Organization listed types of telephone transmission, which is the subject matter of this dispute, as follows:

"Silverton, Texas
October 12, 1966

Prj--Ft. Worth
WJH--WFalls

Phone conversation with Silverton Elevators, Inc. this date, Mr. Tidwell, Mgr. of Elevator now wants 4 mty small covered hopper cars for loading milo to Plainview on our next local to Silverton. Will load 20 to 30 cars in next 3 months along with other grain car loading.

W W L

Silverton, Texas
October 12, 1966

WJH WFalls

Need 10 mty grain cars and 4 mty covered hoppers, will have 10 cars milo loaded by tomorrow noon.

Phoned 215 PM

W W L"

Carrier raises a procedural defect in regard to the alleged failure of the Claimant to institute his claim before this Board within 9 months from the decision of Carrier's highest designated officer. However, we find that Carrier failed to prove said defect and this contention must be denied.

In the oral panel discussion before this Board, it was argued in behalf of the Organization that, there was a violation of Rule 2(a) by the Carrier in this instance, in that Carrier reclassified the station to a lower rated position although the duties remain the same. Carrier member objected to this argument as not having been raised on the property and not within the framework of the Statement of Claim. However, on Record Page 23, it shows that the Organization did refer to Rule 2(a) on the property, alleging that the Agent-Telegrapher work has been unchanged by changing the position to a non-telegraph agency, and therefore objection to our considering a possible violation of said Rule 2(a) is without merit and must be denied.

This Board, in Award No. 9961, involving the same parties to this dispute, considered a similar issue as involved herein, said:

"The only issue under consideration is whether or not Carrier improperly reclassified the Agent-Telegrapher position; on the basis of this record, that issue must be resolved in the negative since we cannot validly find that substantial duties of the Agent-Telegrapher position remained to be performed after it was abolished. According, the claim will be denied."

Likewise, the Organization has failed to sustain its burden of proving Carrier "reclassified" the station in question to a lower rated position while

the duties remain the same, and therefore we find that Carrier in this instance did not violate Rule 2(a) of the Agreement.

Further, we find that the telephone transmissions in question, in view of the ruling set forth in this Board's said Award No. 9961, are nothing more than "informational messages" and not communications of record as contended by the Organization.

For the aforesaid reasons, this claim must 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October 1969.