

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION**

Paul C. Dugan, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION DIVISION, BRAC****MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Missouri-Kansas-Texas Railroad Company, that:

1. Carrier violated the provisions of the Telegraphers' Agreement and Memorandum of Agreement dated January 25, 1966, when on May 13, 14, 17, 18, 20, 21, 24 and 25, 1968 allowed, permitted or caused employes not covered by the agreement (employes of the Joint Texas Division, CRI&P-FW&D Railroad Companies) to work, fill and perform eight hours' service on the telegrapher's position of the MK&T relief assignment at Waxahachie on such dates.

2. (a) For such violations, Carrier shall now allow the senior idle extra MK&T telegrapher, holding rights on the North Texas Telegraphers' District, eight hours' pay pro-rata rate for failure to be used on such MK&T relief position for each date listed herein.

(b) In the event that no senior idle extra MK&T telegrapher was available for such listed dates, Carrier shall then allow the senior idle MK&T telegrapher on the North Texas District observing his rest days, eight hours' pay at time and one-half for failure to be used on such MK&T Relief position vacancy.

(c) For failure on the part of the Carrier to properly fill the vacancy on the MK&T Relief position at Waxahachie, compensation as listed in 2(a) and 2(b) shall be allowed after joint check of records is made to determine the eligible and proper claimants.

EMPLOYEES' STATEMENT OF FACTS:**(a) STATEMENT OF THE CASE**

This dispute is predicated upon various provisions of an Agreement between the Missouri-Kansas-Texas Railroad Company (MKT) and the T-C Division, BRAC, dated September 1, 1949, as amended and supplemented,

ber 30, 1967, and had protected the Waxahachie vacancy until May 10, 1968, when he laid off sick giving rise to the instant claim. J. W. Braswell, seniority date June 5, 1967, who was attending college and had informed the Superintendent's office that he would only accept work on weekends and then only at Dallas Yard, Dallas, Texas. H. J. Kearny, seniority date of April 9, 1967, who also had informed the Superintendent's office that he was attending college; would accept work on weekends but only at Ray Yard, Denison, Texas.

June 3, 1968, General Chairman A. W. Riley submitted time claim, to Superintendent O. C. Putsche, for one day pay each date, May 13, 14, 17, 18, 20, 21, 24 and 25, 1968, at the pro-rata rate for the senior idle extra M-K-T Telegrapher, holding rights on the North Texas Telegrapher's District, account Joint Texas Division, CRI&P-FW&D Railroad employees used on their rest days on the coordinated positions at Waxahachie, Texas, contending that in the event no senior idle extra M-K-T Telegrapher was available for such listed dates, Carrier then shall allow the senior idle regular assigned telegrapher on the North Texas District, observing his rest days, eight hours pay at the time and one-half rate, for failure to be used on such M-K-T relief position.

The claim was declined by Superintendent Putsche June 14, 1968. Mr. Putsche was succeeded by Superintendent T. G. Todd and General Chairman Riley appealed to Mr. Todd by letter of June 21, 1968; Superintendent Todd advised the General Chairman that the claim had been declined on June 14, 1968, by Superintendent Putsche, and he felt no further action was necessary on that level. General Chairman Riley appealed to former Vice-President of Personnel, Mr. A. F. Winkel, August 12, 1968; was declined by the undersigned on October 10, 1968; discussed and declined in conference with the undersigned November 19, 1968.

Attached hereto and made a part hereof, is copy of correspondence exchanged by the parties in handling this matter as Carrier's Exhibit "C".

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization disputes herein the use of CRI&P-FW&D employees in filling MK&T telegrapher relief position at Waxahachie, Texas on the dates in question, declaring that the January 25, 1966 Memorandum of Agreement, governing the coordinated facility at Waxahachie, Texas, apportions the positions of the Agent-Telegrapher and its relief assignment to MK&T employees, either by the usage of an available extra telegrapher or by a MK&T telegrapher observing his rest day on said claim dates.

The Organization relies on Section 3 (a) of the said January 25, 1966 Memorandum of Agreement, the pertinent part thereof providing as follows:

" . . . Vacation and other temporary work on these positions will be filled by extra men from the roster of the railroad whose employees are regularly assigned to these positions."

Carrier predicates its defense to this claim on the grounds that an emergency existed on said dates in question and no extra MK&T telegraphers were available to fill the relief positions in question; that nothing in the

Agreement or in the Waxahachie Memorandum of Agreement makes it mandatory that Carrier use regularly assigned employes on temporary vacancies at Waxahachie inasmuch as the Memorandum of Agreement specifically states that "extra men" only will be used for vacation and other temporary work; that Carrier permitted Joint Texas Division (CRIP-FWD) telegraphers to work their rest days at Waxahachie, Texas until an MK&T telegrapher was available.

The fact that no extra M-K-T telegraphers were available to fill the positions in question on said claim dates does not exonerate the violation of Section 3(a) of the January 25, 1966 Memorandum of Agreement. Said section clearly makes it coercive that temporary vacancies be filled with extra men from the roster of the railroad whose employes are regularly assigned to these positions, in this instance M-K-T telegraphers, and that the said January 25, 1966 Memorandum of Agreement was violated when Carrier engaged employes not ensconced by the Agreement to fill the telegrapher's position of the MK&T relief assignment at Waxahachie, Texas on said claim dates. See Award No. 17973. For the aforesaid reasons the claim is sustained.

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1970.