

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
THE TEXAS AND PACIFIC RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Texas and Pacific Railway Company, that:

1. Carrier violated the agreement when it relieved Mr. C. L. Knippers, Bunkie, Louisiana, with a person not covered by the scope of the Telegraphers' Agreement with the Texas and Pacific Railway Company.

2. Carrier shall allow Mr. A. J. Taylor eight hours pay at the applicable time and one-half rate on each of the dates of September 16, 17, 23 and 24, 1967; Mr. D. L. LeJune eight hours pay at the applicable time and one-half rate on each of the dates of September 18, 19, 25 and 26, 1967; and Mr. C. E. Dowden eight hours pay on each of the dates of September 15 and 22, 1967 at the applicable time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties, effective May 15, 1950 as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The dispute arose on September 15, 1967 at which time Carrier granted a vacation to the Operator at Bunkie, Louisiana and assigned the vacation relief to a person holding no seniority rights under the Parties Agreement.

Carrier contends that in the absence of an extra employe to protect the vacation work it had the right to employ the services of an employe from another seniority district to perform this work.

Employes contend that only persons covered by the Agreement should have been used. That since no extra employes were available the employes who were on their rest days should have been used.

(b) ISSUES

1. Was the Agreement violated because Carrier assigned vacation relief work to an employe not under the parties agreement?

no telegrapher was available as all were working. Telegrapher M. A. Bianco, who holds seniority on the Carrier's DeQuincy Division but was not working, advised that she was willing to perform such extra work at Bunkie, Louisiana.

As you know, in such circumstances the Carrier has the right to hire a new employee to fill a necessary vacancy or to employ the services of a furloughed telegrapher from another seniority district, who would otherwise be unemployed. We think the action taken here was more desirable than a new hiring. It has generally been the policy of this Carrier to first offer employment to its own employees who are out of work before hiring new employees. We think this is fair and reasonable and is in step with public policy as well as the policy of the Railroad Retirement Board. There is no provision in the Telegraphers' Agreement which prohibits the Carrier from employing the services of a furloughed employee in lieu of hiring a new employee."

Carrier's Exhibit "A"

7. The claim was not composed and Carrier is in receipt of a copy of the Organization's notice of intent to file same with your Board.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claim as set forth in the Statement of Claim is identical to the Claim filed with the Superintendent in letter dated October 18, 1967. We excerpt from that letter (NOTE: In all quotes, *infra*, emphasis are supplied.):

"STATEMENT OF FACTS:

Mr. C. L. Knippers is regularly assigned to the third shift Telegrapher position at Bunkie, La., having as an assigned work week Friday thru Tuesday, rest days Wednesday and Thursday and with assigned hours 11 P.M. to 7 A.M. Mr. Taylor is regularly assigned to the first shift Telegrapher position at Bunkie, while Mr. Dowden is the regularly assigned relief Telegrapher at that point. Claim dates mentioned above are assigned rest days of each of the Claimants.

Telegrapher Knippers was relieved for ten days of vacation, September 15 through 26, 1967, excluding rest days of September 20 and 21, 1967. Instead of assigning the regular assigned Telegraphers at Bunkie, La., to working their rest days in the absence of an extra Telegrapher, for reasons best known to themselves, they caused, required or permitted a Mr. M. A. Bianco who holds no seniority as a Telegrapher with The Texas and Pacific Railway to fill this vacation vacancy. Telegraphers on The Texas and Pacific Railway have a working agreement with said carrier to perform this work.

EMPLOYEES' POSITION:

The named Claimants should have been used on their rest days to fill the vacation vacancy in lieu of a person holding no seniority as a Telegrapher with the T&P Railway Company. When they were not so used, the agreement was violated. Had they been used to perform

this work to which they are contractually entitled, they would have earned the time and one-half rate claimed. Please allow and advise."

The Superintendent denied the Claim on December 2, 1967, giving as reasons:

"Facts in this case are that regular third trick man Knippers was on vacation and had moved the Swing man C. E. Dowden off his assignment and working Knippers vacancy, therefore, working rest days on first, second and third tricks, and it is my understanding the claims above cited are for time that these claimants would have worked their rest day had we not sent a telegrapher from the DeQuincy Division to protect this vacancy.

We had an extra telegrapher on the DeQuincy Division who was not working and Extra Telegrapher M. A. Bianco was sent to protect the vacancy at Bunkie account none available on the seniority district. Telegrapher Bianco was sent to Bunkie to work 11:00 P. M. to 7:00 A. M. assignment and released C. E. Dowden back to his swing job as of Sept. 15, 1967 and Telegrapher Bianco worked at Bunkie through September 26, 1967."

Petitioner in its appeal to the General Manager, dated January 29, 1968, stated:

"Mr. Jackson describes the claim as being in behalf of the named Claimants for the time they would have worked their rest days had the Carrier not sent a Telegrapher from the Missouri Pacific Railway to protect the vacancy at Bunkie, La., and his description is correct. The Telegrapher positions at Bunkie, La., are covered by agreement between this Organization and The Texas and Pacific Railway Company. The employee sent to Bunkie to perform work on the Telegrapher positions at that point was not an employee of The Texas and Pacific Railway and thus had no contractual right to perform this work. The employees of the T&P RR., had a contractual right to perform the work and they were deprived of said work.

It seems that Mr. Jackson denies the claim solely on his contention that there is no provision in the Telegraphers' Agreement which would restrict the carrier from using a Missouri Pacific Telegrapher on the positions at Bunkie which carrier has contracted to T&P Telegraphers. Such argument obviously falls on its face."

The General Manager, on March 12, 1968, denied the appeal for the same reasons as were given by the Superintendent.

Petitioner, on May 8, 1968, appealed to Director of Labor Relations, the chief operating officer of the Carrier designated to handle such disputes:

"Carrier used a person who was not an employee of The Texas and Pacific Railway Company and who held no seniority rights as a Telegrapher with said Carrier to relieve Telegrapher C. L. Knippers at Bunkie, La. The above named Claimants were thus deprived of the right to work on their rest days as a result of this violation. Claimant has been made under the provisions of Article 6, Section 1, which provides for eight hours time and one-half on each of the named

dates in behalf of Claimants, the exact amount they would have earned had they been permitted to work. Claimants are entitled to be made whole for lost earnings.

The person who was permitted to work the position in question is an employe of the Missouri Pacific Railway Company and holds seniority with that Carrier as a Telegrapher both prior to and following his use on The Texas and Pacific Railway Company. Since he was not an employe of The Texas and Pacific Railway Company and since he held no seniority as a Telegrapher with said Carrier, he had no right to the work in question."

He denied the appeal on June 12, 1968, giving as reasons:

"As we understand the matter, Telegrapher C. L. Knippers at Bunkie, Louisiana was granted his vacation period from September 15 through 26, 1967 and, since it was essential to fill the temporary vacancy occasioned thereby, the Carrier attempted to locate an available telegrapher holding seniority on the Red River and Dallas-Ft. Worth Terminal Divisions to fill the temporary vacancy; however, no telegrapher was available as all were working. Telegrapher M. A. Bianco, who holds seniority on the Carrier's DeQuincy Division but was not working, advised that she was willing to perform such extra work at Bunkie, Louisiana.

As you know, in such circumstances the Carrier has the 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 would otherwise be unemployed. We think the action taken here was more desirable than a new hiring. 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 as well as the policy of the Railroad Retirement Board. There is no provision in the Telegraphers' Agreement which prohibits the Carrier from employing the services of a furloughed employe in lieu of hiring a new employe.

In view of the foregoing, claim is without merit or rule support and is respectfully declined.

It is also our further position that the monetary claims are without basis because all claimants were working during the period involved in these claims. None of them suffered any loss in earnings by reason of Carrier's action in this case. Since there is no penalty applicable in the instant situation provided for in the Agreement, there can be no basis for monetary claim."

By obfuscation the Carrier involved herein has attempted to create an impression that it and the Missouri Pacific Railway Company are an entity. Regardless of whatever other relationships may exist between the two carriers their respective telegrapher employes are covered by separate and distant collective bargaining agreements with unrelated collective bargaining units.

Missouri Pacific Railway Company employes are strangers to the Agreement involved in the dispute before us; consequently, they have no standing

under that Agreement nor employee relationship with the Carrier involved herein. See our Award No. 14591 in which we held:

"* * * we find immaterial the fact that the employees belonged to the same national labor organization — the collective bargaining contracts in the railroad industry are entered into on a system basis — not industry-wide. They vary in content and at times, although identically worded, are often interpreted and applied differently on the respective properties. **Each agreement is confined to the collective bargaining unit recognized therein.**"

* * * * *

"The precise issue is whether Carrier was contractually barred from transferring work exclusively within the Scope of the Agreement to persons not within the collective bargaining unit of that particular contract. Who the persons may be or their relationship to Carrier is not material.

The heart of the collective bargaining agreement is the work and the right to perform that work vested in the employees in the collective bargaining unit as against the world. The bargain once made may not thereafter be lawfully unilaterally changed by either party."

Director of Labor Relations in his statements "We think the action taken here was more desirable than a new hiring." and "It has generally been the policy of this Carrier to first offer employment to its own employees who are out of work before hiring new employees." is clear and convincing evidence of obfuscation and an admission that Bianco was not hired by Carrier involved herein. From this we find and hold that Carrier involved herein violated the confronting Agreement when it assigned Bianco, who was possessed of no status under it, to perform work contractually reserved to employees covered by that Agreement.

Carrier's statement that "all claimants were working during the period involved in these claims" is patently in conflict with the uncontroverted evidence of record that each Claimant was on his rest day on the dates specified in paragraph 2 of the Claim. No question having been raised as to availability it must be conclusively presumed that each Claimant was available on the specified dates — therefore, a proper Claimant.

For the foregoing reasons we will sustain the Claim.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1970.