

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21570
Docket Number CL-20946

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(The Texas and Pacific Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7659) that:

1. Carrier violated the Memorandum Agreement of February 20, 1969, commonly known as the Mobile Agency Agreement, which became effective January 1, 1969, when it established position of Mobile Agency Route No. 3, effective January 12, 1970, and headquartered such position in Carrier's Dallas Freight Station, West Dallas, Texas, a location and station where no employe subject to the TCU Agreement was regularly assigned, and failed and refused to establish a position of Assistant Agent-Telegrapher, as required by the Memorandum Agreement. (Carrier's File 302-72).

2. Carrier shall now be required to compensate the senior idle Telegrapher, extra in preference, eight hours' pay per day at the pro rata rate of the established rate for Assistant Agent-Telegrapher positions, six days per week, beginning January 12, 1970, and continuing until the violation is corrected.

OPINION OF BOARD: By notice issued in October 1969, effective as of the close of business on January 10, 1970, Carrier abolished the agency positions at Harrys, Eagle Ford and Mesquite, Texas, and effective January 12, 1970 Management established a Mobile Agency Route No. 3 position to serve the foregoing locations--working Monday through Saturday, rest day Sunday, with listed headquarters at Dallas, Texas. When he was in Dallas, the incumbent of this position performed his work at Carrier's freight facility.

The instant claim is based on Petitioner's contention that Carrier violated the applicable Mobile Agency Agreement effective January 1, 1969 between Carrier and the Transportation-Communication Employees Union when the subject Mobile Agency position was headquartered at a station where no employe subject to the TCU Agreement was regularly assigned, and Carrier failed to establish a position of Assistant Agent-Telegrapher at that location. These contentions are based on Paragraphs 1(d) and 2(a) of the involved Mobile Agency Agreement, which read respectively as follows:

"1(d) Mobile Agency positions will have designated headquarters at stations where an employe subject to the TCU Agreement is regularly assigned, in addition to such Mobile Agency positions."

"2(a) If it is necessary to increase the station force at the base station or headquarters of the Mobile Agent or Agents as a result of the establishment of 'Mobile Agency Service,' one Assistant Agent-Telegrapher position will be established with designated headquarters, which will be advertised to employes holding seniority under agreements between the parties signatory hereto."

When the subject Mobile Agency position was established, no employe subject to the TCU Agreement was already regularly assigned to the subject freight facility, which is located in the western portion of Dallas. However, T&P Junction Tower--located in the eastern portion of Dallas, 7.2 rail miles distant from the freight facility--contained positions to which employes (Operators-Levermen) covered by the TCU Agreement were already regularly assigned. The primary duties of the tower employes are incidental to the interlocker operation and the handling of such train orders as are necessary. Moreover, it was unnecessary to increase the force at the freight facility or elsewhere in Dallas as a result of the Mobile Agency Service. Carrier therefore maintains no violation of the Mobile Agency Agreement occurred because Dallas comprised one station--the freight facility and the T&P Junction Tower being within the same station limits. Carrier further asserts Petitioner seeks to use above-quoted Paragraph 2(a) for a purpose for which it was never intended. Finally, Carrier contends Petitioner is unable to identify any employe subject to the TCU Agreement who suffered any loss in the instant case, which means that a penalty for which no justification exists is here being sought.

The record establishes that the freight facility where the Mobile Agent No. 3 is in fact headquartered and T&P Junction Tower are not in the same station. This is not simply a "timetable fiction" because, as indicated above, the two facilities are several miles apart. It taxes one's credulity to believe that the tower employes could assist Mobile Agent No. 3 in the performance of his work, as contemplated by Paragraph 2(b) of the Mobile Agency Agreement. The claim has merit.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1977.