

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24177  
Docket Number CL-24013

Ida Klaus, Referee

PARTIES TO DISPUTE: { (Brotherhood of Railway, Airline and Steamship Clerks,  
{ Freight Handlers, Express and Station Employees  
{ (The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood  
(GL-9449) that:

(1) Carrier violated Rule 1 and other related Rules of the current Telegraphers Agreement; Rule 1 and other related Rules of the current Clerk's Agreement; the Memorandum of Agreement signed December 17, 1974 and, the Memorandum of Agreement signed December 22, 1976 when it failed to bulletin a position at Sedalia, California, and/or permitted the AT&ST Railway to man the position with Mr. Lou Nava and AT&SF employees beginning September 24, 1979.

(2) Carrier shall now be required to compensate Mr. S. R. Van Schwartz the difference between the rate of pay he received working at Denver North Yard on clerical position and the amount that would have been paid an operator on straight time hours and any overtime hours that were worked by Mr. Nava as well as any meal periods beginning September 24, 1979 and continuing until corrected.

OPINION OF BOARD: The claim alleges that the Denver and Rio Grande Western Railroad Company violated the Scope Rule of the Telegrapher's Agreement by allowing the Atchison, Topeka and Santa Fe Railroad Company to utilize a Santa Fe Telegrapher to perform work at a Sedalia, Colorado station. The claim asserts that the Denver and Rio Grande Western Railroad Company should have assigned one of its own employees (i.e., the claimant).

The claimed violation concerns a joint line arrangement, in effect since about 1915; by which the previously existing trackage of each of the carriers was combined to form a two-track main line for their joint use, one operated Northbound and the other Southbound. So far as is here pertinent, each carrier has continued to own and maintain its original trackage.

This dispute arose when the Atchison, Topeka and Santa Fe Railroad Company placed its employe at a facility in the vicinity of the Sedalia Station to perform telegrapher's work while a Santa Fe Gang was laying rail for Santa Fe on a Santa Fe-owned track.

The Organization asserts that its claim is supported by past history. It relies principally on an alleged agreement assertedly made in the 1940's between the two carriers and the former Order of Railroad Telegraphers (now BRAC). That agreement, it asserts, established Sedalia as a Rio Grande station and stipulated that a Rio Grande employe would man any telegrapher position within station limits of Sedalia. The Carrier denies that any such agreement was ever made or historically recognized.

The Organization concedes that it has been unable to locate and produce the agreement. It contends, however, that the fact of the existence of the agreement is clearly established by the following undisputed circumstances:

(1) A wire sent by the Rio Grande Superintendent to the Santa Fe Superintendent at the start of the disputed work, stating:

"Based on organizational contract with Telegraphers, Sedalia, Colorado is a DRGW Station to be manned by a DRGW employe. Any claim filed will be billed back against ATS&F."

(2) The written statement of a Rio Grande agent headquartered at Littleton, Colorado, that, 'as past practice and according to previous agreements in effect,' he had protected emergency calls and work at Sedalia Station.

(3) Rio Grande bulletins a few months earlier awarding the temporary position of Operator-Sedalia to a Rio Grande employe."

The Organization also concedes that Sedalia no longer exists as a station; but it maintains, on the basis of the aforementioned circumstances and the Joint-Line timetable, that the basic principle established by the alleged agreement still controls.

The Board concludes on the record made that the Organization has not met the burden of proving by clear and convincing evidence the existence of the agreement on which its claim is founded. That burden is especially heavy where, as here, the agreement sought to be proven would vary substantially the terms of a long-established underlying arrangement.

While we consider the wire sent by the Rio Grande Superintendent to be material to the Organizational claim, we cannot regard that statement as sufficient in itself to establish the existence of the particular agreement as specified by the Organization. Nor can we find in that statement,

or in the other circumstances, convincing evidence of a course of conduct over the years clearly demonstrating that the parties acknowledged and accepted Telegrapher's work for the entire operation in the area as protected exclusively for Rio Grande employees.

Accordingly, the Board must conclude on the record as a whole that the Organization has not shown that the Rio Grande violated the scope provisions of its agreement with the Telegraphers by permitting the assignment of a Santa Fe employe to the work in question.

The claim will 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 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

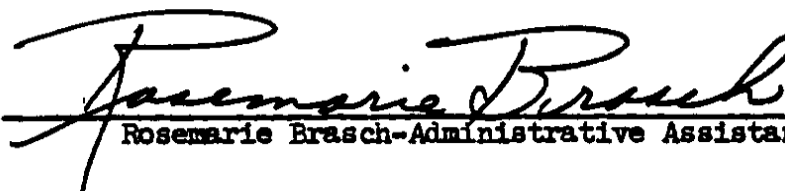
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: Acting Executive Secretary  
National Railroad Adjustment Board

By   
Rosemarie Brasch-Administrative Assistant

Dated at Chicago, Illinois, this 28th day of February 1983.