

Under the
RAILWAY LABOR ACT
Special Board of Adjustment No. 226

Hearings April 9-30, 1958

Dallas, Texas

Award No. 24

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF ORT CLAIM: MSC 5-22:

1. Claim that the Carrier violated the Agreement when on February 20, 1957 it improperly and unilaterally abolished the position of Ticket Agent-Telegrapher Clerk at Oklahoma City, Oklahoma, a position covered by the Agreement, and thereupon transferred the work of said position to the Supervisory Agent at that point, a position not subject to the Agreement except as to Rules 1 and 18 thereof.

2. That said violation shall be corrected by paying the former incumbent of the position, Mr. P. R. Jones, the remuneration he would have received since the date of said "abolishment"; that in the event Jones had left the service the First Shift Telegrapher-Clerk at Oklahoma City (who would be entitled to move up on the position), to be paid the difference in rate of pay between his own position and that of the Ticket Agent-Telegrapher Clerk; and that the senior extra telegrapher be paid the difference not claimed in behalf of the First Trick Telegrapher-Clerk.

3. That the Carrier violates the Agreement when it unilaterally reclassifies positions of Supervisory Agent at stations listed in Rule 1 (b); when it holds that such Agents are "official in character"; and when it fails and refuses to make proper correction of unauthorized titles for such positions and issue proper advise to the Employees with respect to appointments thereto in the application of Rule 1(b) and Rule 18.

FINDINGS AND OPINION:

Paragraphs 1 and 2 of the Statement of Claim present one claim, to be hereafter designated as Claim No. 1. Paragraph 3 presents another claim, to be hereafter designated as Claim No. 2.

Claim No. 1: The Carrier insists that we have no jurisdiction of Claim 1 on the ground that it was not filed with the Carrier until June 21, 1957. There was considerable back and forth correspondence between the parties within the period of 60 days after the Ticket Agent-Telegrapher Clerk at Oklahoma City was abolished on February 20, 1957, but prior to June 21, 1957, the correspondence from the ORT consisted only of protests against the abolishment of the position and requests for its restoration. A conference between representatives of the ORT and Carrier was held April 18-25 to consider the ORT protests and requests but an actual claim was not formulated and filed until June 21, 1957. It is not satisfactory to glean through correspondence which passes between parties within the 60-day period for filing claims and therefrom make a finding that a claim was timely filed. But we resolve this doubtful point in favor of the claimant and take jurisdiction of the claim on its merits.

As to the claim itself, the Carrier objects to the form of its presentation. It is in behalf of either of three persons, one named and two unnamed. With this objection we agree. The claim is held to be in behalf of P. R. Jones, only.



Jones was not a telegrapher. When he took the position "Ticket Agent-Telegrapher Clerk" by special negotiations of the parties, effective January 1, 1954, it was agreed that such out going message work as might originate at his office would be phoned by him to the telegrapher at Turner Yard (Oklahoma City) for further handling to destination, also that incoming messages destined to his office would be received at Turner Yard and then phoned to Jones by the Telegrapher at Turner Yard.

Jones' ticket work was very light. He sold tickets for only one train for a period of 1½ hours at train time each day. Then he went to the traffic office to do clerical work. The lightness of his ticket selling duties is further illustrated by the fact that not only was the work of ticket selling abolished on February 20, 1957, but passenger train service into and out of Oklahoma City was discontinued by this Carrier on January 18, 1958. Between February 20, 1957 and January 18, 1958, persons leaving Oklahoma City on the one MKT passenger train paid cash fares to the Conductor.

The record does not disclose the volume of clerical work Jones was performing at the time his position as Ticket Agent-Telegrapher Clerk was abolished on February 20, 1957.

~~This~~ is a prerogative of management to rearrange its work to effect efficiency and to abolish positions for the same reason, unless its collective agreement with its employees prohibits. The Telegraphers' Agreement does not include such prohibitions.

The Scope Rule simply enumerates job titles. It does not guarantee work. It does not even specify what work shall be deemed to be within the scope of any particular job title. Work, as such, is not guaranteed or described in the Scope Rule. Work as traditionally performed by employees under the Telegraphers' Agreement, is determined from position to position under the facts of each dispute affecting a given position. But the positions themselves are not protected against the possibility of abolishment. Indeed, such an agreement would be in conflict with public policy, for the reason that a state utility commission possesses the power and authority to close or abolish railroad stations if they are found to be not necessary in the public interest.

The Telegraphers' Agreement neither guarantees against shifting of work from one position to another nor against abolishment of a position to effect efficiency.

The telegraph work attaching to the position had already been shifted to Turner Yard by agreement. It would be illogical to contend that the telegraph work remained with the position simply because Jones carried the term "telegrapher" in his job titled. He did not perform telegraph work. He was not a telegrapher. When the telegraph work went to Turner Yard, Jones performed an inconsequential amount of telephone communications work that formerly belonged to a telegraph position but which had been shifted to Turner Yard by agreement.

The Carrier violated no rule when it later abolished the position.
Therefore, we will deny Claim No. 1.

Claim No. 2 is limited to a contention that the Carrier violates the Agreement when it

".....reclassifies positions of Supervisory Agent at stations listed in Rule 1 (b) and when it fails and refuses to make proper correction of unauthorized titles for such positions and issue proper advise to employees with respect to appointments thereto and in the application of Rule 1 (b) and Rule 18."

The claim does not request relief. There are no penalty rules applicable to the matters stated in the complaint. It appears that we can not do more than interpret the agreement with respect to the matters complained of.

Rule 1 (b) states that,

"The following stations are considered supervisory and are not subject to the rules of the agreement except Rules 1 and 18."

Rule 1 consists of subsections (a), (b), (c) and (d). Rule 1 (a) is the so-called Scope Rule. It has no pertinency to the dispute. Rule 1 (b) is quoted above. Rule 1(c), (d) and (e) clearly are not pertinent to this claim.

Rule 18 reads, as follows:

"Employees covered by these rules who are used in dispatchers' office or who desire promotion to train dispatcher or supervisory agent, not covered these rules will be given preference over others where ability is sufficient and will retain their rights to their position for six (6) months, and at the expiration of six (6) months their position becomes vacant subject to Rule 2, Paragraph (a). In the event they desire to return to service covered by these rules on their seniority district they may do so after six (6) months, taking their place on the extra list with full seniority."

In addition the ORT has called attention to Award No. 6202, in which the Third Division, National Railroad Adjustment Board, interpreting Rule 18, said on May 5, 1953:

"Considering the foregoing, we conclude that occupants of the position of Supervisory Agents at the stations named in Rule 1 (b) are 'employees', insofar as Rule 18 is concerned, and the Organization represents them to that same extent."

The meaning of the above rules and Board award are self evident. They do not authorize us to find that the Carrier violates its agreement by giving the supervisory agent at Oklahoma City and Kansas City the titles "Agent-Yardmaster" and "Terminal Superintendent and General Agent," respectively. No employee subject to the Telegraphers' Agreement or anyone else is injured by a mere title given to a supervisory agent.

Rule 18 includes a provision favorable to the employees under the Telegraphers' Agreement. It specifies that,

"Employees covered by these rules who are used in dispatchers' office or who desire promotion to train dispatcher or supervisory agent, not covered by these rules, will be given preference over others where ability is sufficient....."

It is incumbent on the Carrier under Rule 18, to make a fair effort to give preference to employees under the Telegraphers' Agreement in selecting train dispatchers or supervisory agents, regardless of job title, if candidates are available with sufficient ability. How this search for candidates with sufficient ability should be made, the rule does not specify. However, by letter dated Dallas, March 12, 1940, the Carrier, in response to a request from the General Chairman to clarify procedures for selecting personnel to fill positions at supervisory stations, addressed the following letter to the General Chairman:

"Referring to your letter February 26, 1940, in connection with previous correspondence and our conference of February 16, about appointment of agent at Greenville:

"We will handle appointments of agents at excepted stations either from the list of present incumbents of such agencies or select them from the agent-telegraphers' list when individuals with required ability are available."

We find that the above procedure is still in effect.

AWARD:

Claim No. 1 - denied.

Claim No. 2 - rules interpreted as per findings and opinion.

/s/ Daniel C. Rogers
Daniel C. Rogers, Chairman
Fayette, Missouri

/s/ W. I. Christopher
W. I. Christopher, Employee Member
Deputy President, O. R. T.
3860 Lindell Blvd.
St. Louis 8, Missouri

/s/ A. F. Winkel
A. F. Winkel, Carrier Member
Ass't. General Manager
Missouri-Kansas-Texas Lines
Dallas, Texas

Dallas, Texas

August 1, 1958