



B E F O R E
SPECIAL BOARD OF ADJUSTMENT NO. 226

Dallas, Texas

AWARD NO. 29
CASE NO. 59-27-22
ORT FILE: BU-4052-22

THE ORDER OF RAILROAD TELEGRAPHERS)
)
vs)
)
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY)
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS)

STATEMENT OF CLAIMS:

"1. That the Carrier violated the Telegraphers' Agreement when it failed and refused to establish the rate of \$2.24 per hour for the position of agent at Alvarado, Texas, effective April 16, 1958."

"2. That the Carrier shall be required to establish the above rate from April 16, 1958, and to pay Mr. M. L. McAfee, Mr. E. D. May, and any other incumbents of the position the difference between \$2.24 per hour and the rate of \$338.11 per month which they received."

FINDINGS:

Under Docket No. 1449-RO, the Railroad Commission of Texas, in its Order dated December 16, 1957, authorized the Missouri-Kansas-Texas Railroad Company of Texas to discontinue its "agency" at Alvarado on a twelve-months basis and to operate the station at Alvarado, Texas, as a prepay station. In compliance with the Order, the Carrier closed its station at Alvarado on December 20, 1957.

On February 21, 1958, acting on a motion for rehearing, the Commission rescinded its aforesaid closing order dated December 16, 1957, and issued a new order reading, as follows:

In its order dated December 16, 1957, relating to the matter herein above identified by docket number caption, the Commission authorized Missouri-Kansas-Texas Railroad Company of Texas to discontinue its agency at Alvarado on a twelve-months basis and to operate the station of Alvarado, Texas as a prepay station.

After oral argument on Motion for Rehearing heard in Austin by the Commission on January 27, 1958, and a review of the facts and the record in the case, the Commission finds that there is an immediate prospect and probability of greatly increased income at this station which will necessitate the service of a full-time agent.

Therefore, it is ordered by the Railroad Commission of Texas that its order of December 16, 1957, authorizing Missouri-Kansas-Texas Railroad Company of Texas to discontinue its agency at Alvarado on a twelve-months

basis, and to operate the station of Alvarado, Texas as a prepay station, be, and it is hereby rescinded; and the Missouri-Kansas-Texas Railroad Company of Texas is hereby ordered to restore its full-time agency immediately, and to continue such full-time agency for a period of not less than six months from date of restoration of such agency.

Upon receipt of the Order to reopen the station at Alvarado, which was more than two months after the station had been duly closed, the Carrier decided it would reopen the station at Alvarado as an agent-non-telegraph agency instead of an agent-telegrapher agency. Reductions in the number of both freight and passenger trains brought about this decision. Accordingly, the Carrier bulletined Alvarado as an agent-nontelegrapher position on April 4, 1958, and reopened Alvarado on that basis on April 16, 1958.

The foregoing information establishes the fact that Alvarado was a duly closed station from December 20, 1957 until April 16, 1958, a period of approximately four months. It also discloses that the conditions for reopening, as imposed by the Commission, would become automatically removed on or about October 16, 1958.

Neither party petitioned the Railroad Commission of Texas for an interpretation of its reopening order nor for a modification thereof.

On the merits, we find that the Commission ordered discontinuance of the then established "agency" at Alvarado on a twelve month basis. It said exactly that in its above-quoted restoration order. It also said in its restoration order that the same "agency" which it ordered discontinued on a twelve-months basis should be restored and continued as a full-time "agency" for a period of not less than six months from date of restoration of such "agency". In so ordering, the Commission took into consideration the question of balance between station revenues, on the one hand, and station expenses, on the other hand, including the cost of an Agent-Telegrapher.

Therefore, we held that the Carrier shall pay the proper Agent-Telegrapher rate of any employee or employees who serve in any "agency" position at Alvarado between April 16, 1958 and October 16, 1958. The record indicates that the parties agree that the Agent-Telegrapher rate at Alvarado at the time the office was authorized to be discontinued by the Railroad Commission of Texas, effective December 20, 1958, was \$2.24 per hour.

In the foregoing analysis, we are not concerned with the matter of whether the Carrier actually established the services of an Agent-Telegrapher at Alvarado for the not-less-than six months period ordered by the Texas Commission. If there should have been any question as to whether the Carrier furnished service in keeping with the Commission's order, it would arise between the public, the Carrier and the Commission. Our concern is limited to the matter of deciding the claim.

We now come to the portion of the claim related to the period subsequent to October 16, 1958.

The record before the Special Board does not disclose how long after October 16, 1958, an agency of some kind was continued at Alvarado. We assume however, that an agency activity of some kind was actually maintained there at least until October 16, 1958.

After October 16, 1958, there is merit in the Carrier's position that it has managerial prerogative to reclassify Alvarado from an Agent-Telegrapher agency to an Agent-Nontelegrapher agency. The Third Division of the National Railroad Adjustment Board, in Award No. 644, Referee Frank M. Swacker, held that a reclassification of an individual position and fixing a rate therefor is not a violation of the Railway Labor Act, providing, "the Change.....be one in fact in order to warrant the reclassification." (Emphasis ours).

Speaking also for the Third Division of the National Railroad Adjustment Board, Referee Ernest M. Tipton, in Award 2088, said:

"There can be no doubt that if there was no longer any telegrapher's work remaining at this station, the Carrier could reclassify this station as a non-telegraph position." See Award No. 644.

Likewise, Referee H. Raymond Cluster, speaking for the Third Division in Award No. 7768, held:

"Awards Nos. 644 and 2088 have held specifically that if there is no longer any telegrapher work at a station, the Carrier can reclassify the station as a non-telegraph agency."

We have considered the ruling of the United States Railroad Labor Board, in Docket 3994, decided on June 16, 1925, prior to enactment of the Railway Labor Act. We have also considered the more pertinent bargaining experiences between the ORT and the Carrier, as outlined in the employees' brief. But we do not find the reasoning of any of these presentations sufficiently convincing to justify an award from the Special Board that the Carrier can not, without the consent of the ORT, reclassify an Agent-Telegrapher station to an Agent-Nontelegrapher station when in fact there is no longer any telegrapher's work to be performed at the station.

On this portion of the issue, we hold therefore that the Carrier was not bound to pay the Agent-Telegrapher rate at Alvarado after October 16, 1958, if it in fact maintained an Agent-Nontelegraph position there after that date.

AWARD:

Claim partly sustained and partly denied, as per findings.

/s/ Daniel C. Rogers
Daniel C. Rogers, Chairman
Attorney at Law
211-12 Commercial Trust Company
Fayette, Missouri

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

Dallas, Texas
June 6, 1960

November 1, 1960

/s/ A.F.Winkel
A.F.Winkel, Carrier Member
Vice President- Personnel
Missouri-Kansas-Texas Railroad
Company
Missouri-Kansas-Texas Railroad
Company of Texas
Dallas 2, Texas