



Under the
RAILWAY LABOR ACT

Special Board of Adjustment No. 226

Hearings April 9-30, 1958

Dallas, Texas

Award No. 18

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF CLAIM:

ORT Claim 27-27-22 of Telegrapher J. W. Fewell for 15 days' pay for vacation not granted during the year 1957; plus the difference between straight time rate and time and one-half rate because of working during the vacation period to which he was entitled.

FINDINGS AND OPINION:

J. W. Fewell, with seniority on the MKT-T dating from June 19, 1922, took a telegrapher-leverman joint assignment with the MKT-T and Santa Fe railroads at Sealy, Texas, in 1932. Under the joint contract between the Carriers his wages were paid by one Carrier for a period of five years and then by the other Carrier for five years. On June 1, 1953 one of the alternating 5-year periods with the Santa Fe started.

Early in 1957 it was announced that the Sealy job would soon be abolished, due to installation of automatic control. Mr. Fewell watched his chances to bid in a job on his home road commensurate with his seniority and on June 30, 1957 was assigned to duty at the MKT-T Houston, Texas, passenger station.

During the calendar year of 1956 Mr. Fewell earned and qualified for annual vacation to be taken in 1957. The Santa Fe early in 1957, prior to his going to Houston, scheduled Mr. Fewell's earned vacation to start November 9, 1957. After Mr. Fewell returned "home", ending 26 years joint service at Sealy, he promptly requested that, if possible, he would like to start his vacation on August 1, 1957. Also in August, 1957, the Santa Fe advised him that his 1957 vacation would, of course, be under the jurisdiction of the MKT-T, since he no longer worked in joint service at Sealy.

On November 27, 1957, Mr. Fewell was advised by his Superintendent that, inasmuch as he had earned his 1957 vacation while under a Santa Fe 5-year period, he had no 1957 vacation coming from the MKT-T. He was advised: "It was essential that you remain with the Santa Fe to enjoy it."

The MKT-T was Mr. Fewell's "home" road. It made the contract with the Santa Fe for the work he performed at Sealy. The MKT-T was Mr. Fewell's primary employer throughout his 26 years of joint service there. As such, it is primarily obligated to effect fulfillment of his employee rights under the joint agreement. Mr. Fewell bid in at Houston on the MKT-T when he learned the Sealy leverman-telegrapher position would be abolished. That was his legal right. By so doing, he did not surrender any of his employee benefits earned at Sealy.

Obviously, if not already, the two Carriers will face this problem again in 1958, because Mr. Fewell earned one-half of his 1958 vacation at Sealy between January 1 and June 30, 1957. Moreover, the same problem would have been before the Carriers if Mr. Fewell had remained at Sealy until the jobs were closed.

A full and correct settlement with him is implicit in the contract between the two Carriers.

The record is not clear whether Mr. Fewell earned a vacation at Sealy in 1956 for 15 days or three weeks. He should be compensated for the correct number of days at time and one-half. Since Mr. Fewell earned his vacation in 1956 while working as a joint employee, we find that this expense should be divided between the Santa Fe and the MKT-T.

AWARD:

Claim sustained as per opinion.

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

/s/ W. I. Christopher
W. I. Christopher, Employee Member
Deputy President, O. R. T.
3860 Lindell Blvd.
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/s/ A. F. Winkel
A. F. Winkel, Carrier Member
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August 1, 1958