

Under the
RAILWAY LABOR ACT
Special Board of Adjustment No. 226
Hearings April 9-30, 1958
Dallas, Texas
Award No. 26



PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF ORT CLAIMS MSC7-22 and 8-207-22:

ORT Claims are claims that the Carrier violated the Telegraphers' Agreement, Rule 18 thereof, in appointing G. L. Stricklin and W. L. Rutledge as Supervisory Agents at Houston and Fort Worth, Texas, respectively; and that such appointments shall be rescinded and appointments made in accordance with Rule 18.

FINDINGS AND OPINION:

Rule 18 provides,

"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 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."

The ORT in its brief contends that "neither Stricklin nor Rutledge were 'employees' covered by these rules." It contends further that neither of them "were in the proper category to 'retain their rights to their position' or to cause 'their positions' to become vacant subject to Rule 2, Paragraph (a)." which provides for bulleting of vacancies.

G. L. Stricklin, Houston, ORT Claim MSC-7-22. Mr. Stricklin's seniority as a telegrapher dates from November 11, 1924. He was promoted under Rule 18 to the position of train dispatcher a number of years ago. He was later promoted under Rule 19 to an official position as Assistant Superintendent. The ORT states also that inasmuch as the position of Assistant Superintendent pays more than the position of Supervisory Agent at Houston, Mr. Stricklin did not receive a "promotion" when he was transferred from Assistant Superintendent to Supervisory Agent at Houston. It states, further,

"Therefore under such conditions you will have to remove Mr. Stricklin from the Supervisory Agency at Houston, Texas, and comply with the Agreement as it is written, or satisfy us as to the appointment."

In declining the ORT protest against appointment of Mr. Stricklin at Houston, on July 16, 1956, the Carrier states,

"The vacancy at Houston was offered to the Agents at Garland and Military, whom we felt possessed the necessary qualifications to handle this important agency, but they declined to accept the position. It was for this reason the classification of the position was changed to Superintendent of Terminals in order to give Mr. Stricklin some incentive for accepting the promotion, which we did after several days' consideration."

Mr. Stricklin was "transferred" from the position of Assistant Superintendent of the position of "Superintendent of Terminals" at Houston. He was not "promoted" under the provisions of Rule 18 applying to promotions. But there is no absolute prohibition in the Telegraphers' Agreement against filling the supervisory position at one of eighteen stations named in Rule 1 (b) by such a transfer. If employees mentioned for "preference" in Rule 18 refuse appointment to a supervisory station or do not possess sufficient ability to fill a vacancy at a supervisory station, it would be unreasonable to hold that Carrier could not transfer an Assistant Superintendent to such position if he possesses sufficient ability to perform the duties at the vacant position. Such a ruling conceivably could cause a vacancy at a supervisory station to go unfilled indefinitely even though a competent person is available to fill it.

Rule 1 (b) of the Telegraphers' Agreement provides that,

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

It lists eighteen of the largest cities on the Carrier's system, including Houston and Fort Worth.

Subsection (a) of Rule 1 is the Scope Rule. The other subsections of Rule 1, being subsections (c), (d) and (e) are wholly irrelevant to the subject of supervisory stations.

Subsection (a) of Rule 1 designates job titles to which the Agreement applies but it does not list the term "Supervisory Agent" or "Supervisory Station" or any other job title applicable to Houston or Fort Worth. Moreover, in view of the provision in subsection (b) of Rule 1 that Houston and Fort Worth are considered "Supervisory", we would not expect to find a job title in Rule 1 (a), the Scope Rule, applicable to Houston and Fort Worth. Rule 1 (a) has no pertinency to supervisory stations.

Therefore, we find that the job title used at Houston is immaterial and that Rule 1 (b) is not violated because the Carrier uses the job title "Superintendent of Terminals" at its supervisory station at Houston.

At the hearing the Carrier obtained information from its files that there are twenty-five different job titles at Houston with one employee under each and one job title as "Stevedore" with 10 employees under it. At Fort Worth there are eight different job titles with one employee under each and one job title as "Stevedore" with four employees under it. The ORT did not submit any evidence contradicting the Carrier's proof that both Houston and Fort Worth are in fact "supervisory" stations under Rule 1 (b).

Therefore, we find that both Houston and Fort Worth are "supervisory" stations.

Having found (1) that the job title used by the Carrier at a supervisory station is immaterial, (2) that Houston is in fact a supervisory station, (3) that the Carrier is not prohibited from transferring an Assistant Superintendent to the position of Superintendent of Terminals at Houston, providing available employees in the Telegraphers' seniority list are given "preference" in case they possess sufficient ability, we now consider whether Rule 18 was violated by the transfer of Mr. Stricklin to the supervisory position at Houston.

The ORT did not offer proof that any named individual on its seniority list desires appointment and possesses sufficient ability to perform the duties at Houston and therefore was entitled to the appointment ahead of Mr. Stricklin. The burden of proof is on the ORT.

Therefore, there could be no violation of Rule 18 by appointment of Mr. Stricklin until an available employee on the ORT seniority list is named by the ORT in its claim and it is proven that he possesses sufficient ability to handle the work at Houston.

For the foregoing reasons ORT Claim MSC 7-22 will be denied.

ORT Claim MSC 8-207-22 protesting appointment of W. L. Rutledge at Forth Worth. This claim was withdrawn.

AWARD:

Claim MSC 7-22 denied.

Claim MSC 8-207-22 withdrawn.

/s/ Daniel C. Rogers
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August 1, 1958