



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

AWARD NO. 35
CASE NO. 86
BU-4626-22

THE ORDER OF RAILROAD TELEGRAPHERS)
)
)

Vs.)
)
)

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY)
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS)

STATEMENT OF CLAIM:

1. The Carrier violated the agreement between the parties when it used a junior extra employee at Garland, Texas on the dates of November 10, 11, and 13, 1958, instead of assigning the vacancy to Telegrapher L. C. Parks, the senior, available employee entitled to the work.
2. The Carrier shall now be required to compensate Mr. Parks for the three days' pay of which he was deprived as the result of said violation.

FINDINGS:

The Carrier does not contend that Telegrapher L. C. Parks was not the senior, available employee entitled to the work on November 10, 11, and 13, 1958. It opposes the claim solely on the proposition that it has not been handled timely under the existing procedural rules.

Mr. Parks, under date of November 13, 1958 duly filed his claim with Superintendent Mr. R. B. George, for pay for the three days in question, stating that he was "senior to Operator Hadaway and was at home available for work and I am entitled to this claim." Clearly, the claim was, as of the date of filing it, based on seniority rules.

Under date of December 29, 1958, Mr. J. T. Follis, Jr., Local Chairman, wrote to Supt. George advising him that Mr. Parks had not received a reply to his letter of November 13, with which time slips were transmitted to Supt. George.

On January 9, 1959, Supt. George wrote to Mr. Parks at Lancaster:

"Your claim is, in our opinion, without merit and agreement support and is declined. In this connection, please advise under what article you are making this claim." (Emphasis ours)

On March 9, 1959 Mr. Follis answered Mr. George's letter of January 9 and advised him that Mr. Parks was entitled to allowance of his claim "on the seniority provisions of our agreement, specifically, Rules 2 and Rule 4a, b, and c." (Emphasis ours).

On March 11, 1959, Mr. George answered Mr. Follis' letter of March 9, in which he declined the claim again and stated, no doubt inadvertently, that Mr. Follis had still not advised under what article of the agreement the claim was filed.

Under date of March 14, Mr. Follis wrote to Supt. George calling attention to the fact he had, in his letter of March 9, advised that Mr. Parks' claim was filed under "the seniority provisions of our agreement, specifically, Rules 2 and Rule 4a, b, and c." (Emphasis ours).

Finally, under date of March 16, 1959, Supt. George wrote to Mr. Follis stating:

"I still find this claim is without merit as not supported by your agreement and is declined."

Clearly, this series of letters kept postponing the date for the filing of an appeal.

When Supt. George on January 9 said to Mr. Parks:

"In this connection, please advise under what article you are making this claim",

we feel he intended thereby to modify and to hold open for further consideration his previous statement:

"Your claim is, in our opinion, without merit and agreement support and is declined."

Mr. Parks was justified in believing from Mr. George's invitation, that if he could correctly cite a seniority provision supporting his claim, it would be considered and allowed. He was confident of the merit of the claim. We do not believe Supt. George meant, by the qualifying last sentence in his letter, that for procedural purposes he was flatly declining the claim. We think he meant that as of the date he wrote the letter he intended to keep an open mind on a claim that may be shown later to have merit.

It would be too harsh if, in our role of making adjustment, we should say that Mr. Parks, on receipt of Mr. George's letter of January 9, was bound to interpret that letter as a positive and unequivocal disallowance of his claim.

The 60-day period for appeal therefore did not commence until March 16, 1959. The appeal was taken three days later, March 19, 1959. On April 4, 1959, the parties timely submitted the dispute to this Special Board.

There are two additional procedural points encompassed within "Article 5 - Carriers' Proposal No. 7."

1. Did the Carrier within 60 days, or at any time thereafter, comply with the requirement that it shall "notify whoever filed the claim or grievance...in writing of the reason for such disallowance?"
2. Did the claimant within 60 days of receipt of disallowance notify the Carrier "of the rejection of his decision?"

We hold in the negative on each point. These are balancing requirements. If neither requirement was satisfied, the parties, respectively, waived.

The foregoing disposes of the procedural contentions.

On the merits of the claim, we find that Mr. Parks was entitled to the three days in question. He was standing by waiting his turn for an assignment, according to his seniority. The Chief Dispatcher apparently overlooked him. The Carrier has not disputed the merits of Mr. Parks' claim. He was justified in seeking to protect his employment as guaranteed under seniority rules.

AWARD:

Claim sustained.

s/ Daniel C. Rogers
Daniel C. Rogers, Chairman
Attorney at Law
211-212 Commercial Trust Company
Fayette, Missouri

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

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

Dallas, Texas

June 7, 1960