



AWARD NO. 1
DOCKET NO. 1

SPECIAL BOARD OF ADJUSTMENT NO. 305

THE ORDER OF RAILROAD TELEGRAPHERS
vs.
MISSOURI PACIFIC RAILROAD COMPANY
(Gulf District)

STATEMENT OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Lines in Texas and Louisiana, that:

- (1) Carrier violated the current Telegraphers' Agreement when the Star (*) Agency at Robstown, Texas was arbitrarily and unilaterally reclassified from Star Agent (*) to Agent-Telegrapher without conference and agreement in violation of Rule 4 (c) and (d) of the current Telegraphers' Agreement.
- (2) That Carrier now be required to restore to the coverage of said Agreement, the position of Star (*) Agent at Robstown, as into the Telegraphers' Agreement of March 1, 1952, and make Telegrapher M. L. Wisner whole for any losses sustained plus actual necessary expenses incurred due to position of first trick telegrapher at Robstown being abolished when this illegal act of reclassification without conference and agreement occurred on November 5, 1955, said position being owned by Telegrapher M. L. Wisner.
- (3) Any loss in earnings sustained by the employe who was ultimately displaced because of such reclassification and exercise of seniority, and that all displaced employes be made whole for any earnings loss sustained, plus away-from-home expenses incurred as the result of Carrier's violation of Rule 4, Section (c) and (d) of the Telegraphers' Agreement."

OPINION OF BOARD:

The claim before us, as shown by the record, consists of three separate allegations, as set out in the statement, and each will be discussed in numerical order.

Paragraph No. 1 of the Statement of Claim alleges a violation by Carrier by unilaterally and arbitrarily reclassifying the position of (*) Star Agent and giving it a classification of Agent-Telegrapher at Robstown, Texas. It is contended that Carrier, by its action in changing the classification without mutual agreement between the parties, created a less favorable working condition of the claimant which resulted in the violation of the provisions of Rule No. 4 (c) and (d) of the Agreement between the parties.

Carrier contends the position of (*) Star Agent was reclassified on account of changed conditions at Robstown. On October 31, 1955, by proper bulletin issued

SGA 305

AWARD NO. 1
DOCKET NO. 1

PAGE 2.

effective November 5, 1955, it changed the classification of (*) Star Agent at Robstown to Agent-Telegrapher with assigned hours 8:30 A.M. to 4:30 P.M., rest day Sunday. The position of Telegrapher-Clerk on the first shift was discontinued and thereafter telegraph duties were assigned to the new position of Agent-Telegrapher. Carrier further contends that it was justified under the rules of the Agreement to make the changes as described. Carrier relies upon the provisions of Rules Nos. 26, 37 and 38, to support its contention and in addition it relies upon the Memorandum of Understanding between the parties, dated July 16, 1954. Such latter Agreement applies only to Rules Nos. 37 and 38. Paragraph No. 1 of the Understanding provides only that,

"During the time that telegraphic duties are added to the star (*) agent positions now listed in Rule 38 of the Agreement the classification of the position will be changed to Agent-Telegrapher. *****."

Paragraph No. 2 of the Understanding provides that (*) Star Agent vacancies will be filled as provided in Rule No. 37 (b), and Agent-Telegrapher positions shall be filled in accordance with Rule No. 20 (a).

Upon a review of the record before the Board, we are of the opinion that the Memorandum of Understanding applies only to Rules No. 37 and No. 38, and we do not agree with Carrier that such provision in any way authorizes Carrier to unilaterally change a classification of (*) Star Agent position to Agent-Telegrapher position, without application of other rules affecting the parties. While the facts of record here show the Agent employe involved has had no reduction in pay as a result of such change made in his classification, we are of the opinion the Agent has had a change made in his working conditions. Rule No. 26 (c) contemplates that telegraph duties will not be required of a (*) Star Agent unless a change in conditions takes place. While the employe here has had some reduction in duties he was required to perform as (*) Star Agent, such as public relations work for the Carrier, his additional duties as Agent-Telegrapher require the additional work of a telegrapher. In addition, he was given assigned hours and without enumerating all the changes shown by the record, we find that the employe did have a substantial change in his working conditions following the reclassification. Rule No. 26 (c), relied upon by Carrier, does permit Carrier to make reclassification of positions. Carrier has shown by ample reports and statistics that a change in conditions took place at Robstown which would justify its action under this rule.

Rule 4 (d) provides as follows:

"(d) The entering of employes in the positions occupied in the service or changing their classification or work shall not, except by mutual agreement between the Carrier and the Organization, operate to establish a less favorable rate of pay or condition of employment than is herein established."

We find from the evidence submitted that the action of the Carrier in reclassifying the position of (*) Star Agent to Agent-Telegrapher operated to establish a less favorable condition of employment which requires mutual agreement between the Carrier and the Organization as provided therein. Some correspondence was had between Carrier and the General Chairman relative to anticipated change by

SBA 305

AWARD NO. 1
DOCKET NO. 1

PAGE 3.

Carrier but nowhere in the correspondence is mention made as to mutual agreement between the parties, in compliance with Rule No. 4 (d).

The Board concluded that while there is some merit to Carrier's contention that a reclassification of the position here should be made, under conditions shown here, Carrier has failed to comply with the provisions of Rule No. 4 (d), which in our opinion is in no way modified by the Memorandum Agreement of July 16, 1954, or by Rule No. 26 (c).

As to Paragraph No. 2 of the Statement of Claim, this Board does not have the authority to require Carrier to restore the position of (*) Star Agent at Robstown but the claim as to the (*) Star Agent should be remanded to the parties for further negotiation and agreement as provided by Rule No. 4 (d) of the Agreement. As the claimant herein has had no reduction in his earnings, no award can be made for a monetary loss in earnings. As to Telegrapher M. L. Wisner, whose position was discontinued by Carrier effective November 5, 1955, this claim should be sustained from November 5, 1955, to effective date of this Award. Claim for expenses incurred is hereby denied. The Board has no authority to require the Carrier to restore the position of Telegrapher-Clerk to the Claimant Wisner.

Paragraph No. 3 of the Statement of Claim should be dismissed as being vague, indefinite and uncertain.

FINDINGS: Carrier did violate the Agreement to the extent set forth in Opinion of Board.

AWARD

1. Claim of (*) Star Agent sustained and remanded to parties for negotiation and mutual agreement as per Opinion of Board.
2. Claim of Telegrapher-Clerk sustained as per Opinion of Board.
3. Claim as set out in Statement of Facts dismissed per Opinion of Board.

SPECIAL BOARD OF ADJUSTMENT NO. 305

/s/ Donald F. McMahon

Donald F. McMahon - Chairman

/s/ R. K. Anthis

R. K. Anthis - Organization Member

/s/ G. W. Johnson

G. W. Johnson - Carrier Member

St. Louis, Missouri
September 25, 1959