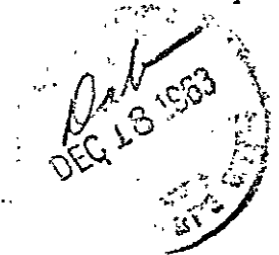


SPECIAL BOARD OF ADJUSTMENT NO. 506

THE ORDER OF RAILROAD TELEGRAPHERS
vs.
MISSOURI PACIFIC RAILROAD COMPANY
Roy R. Ray, Referee



STATEMENT OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad (Gulf District), that:

CLAIM NO. 1

1. The Carrier has violated the Scope Rule of the Telegraphers' Agreement when it has permitted work of billing revenue freight which rightly belongs to Loreauville, Louisiana, Agency, as brought out at the hearing held at Baton Rouge, Louisiana. Missouri Pacific Railroad Company petitioning the Louisiana Public Service Commission for permission to close the Agency at Loreauville, Louisiana on December 19, 1961, by the clerical employes at New Iberia, Louisiana at times when the Agent at Loreauville Louisiana is not assigned to be on duty, and was not on duty.
2. The Carrier shall compensate the agent at Loreauville, Louisiana for not less than one call in each instance when work which rightly belongs to the Loreauville, Louisiana station in previous times (for instance in the year of 1959) when such work was performed by the agent at Loreauville but since that time diverted to New Iberia and other stations, beginning this claim on and after November 6, 1961 and continuing so long as it exists, to be determined by a joint check by the Carrier and the Organization.

CLAIM NO. 2

1. The Carrier is violating the Telegraphers' Agreement of March 1, 1952 when it is transferring the work of billing revenue business from the station of Loreauville, La. by clerical forces at New Iberia, La. that the agent-phoner at Loreauville, La. signs for and always have performed the entire work of the station until some time in the year of 1960 when the Carrier began to take away the work of the station and transfer it to other stations to perform, making the station of Loreauville appear that of not doing much business and losing money as came out in the application of the Carrier to the Louisiana Public Service Commission to close the station of Loreauville, La. at Baton Rouge, La. on December 19th, 1961.
2. That the Carrier shall compensate the senior idle telegrapher, extra in preference, as the records of the Carrier will indicate by a joint check of the Carrier and the Organization for each day that such duties are performed by other than an employe covered by the telegraphers' Agreement, for 8 hours at the minimum telegraphers rate of pay beginning with October 25, 1961 and continue until such time as the duties of the agent-phoner at Loreauville, La. is restored to that station.

OPINION OF BOARD:

Two claims were filed in this case and submitted to the Board. However, at the hearing, Claim No. 2 was abandoned by the Employees. This opinion, therefore, deals only with Claim No. 1. On May 17, 1960, Carrier issued and published a notice that effective June 1, 1960, the work of all intermediate stations between Parks, Louisiana and New Iberia, Louisiana, would be assigned to the station at New Iberia. This was done and since that time, clerks at New Iberia have handled the billing of freight shipped from these intermediate stations. Vida, Louisiana, was one of the intermediate stations. It is located about six or more miles from New Iberia and about one mile from Loreauville, Louisiana. Prior to June 1, 1960, the business originating at Vida, principally that of Vida Sugars, Inc., had been handled by the agent at Loreauville. Vida Sugars is located at Vida and operates on a seasonal schedule, shipments usually being confined to the months of October, November, December and January. On December 24, 1961 claim was filed charging that the transfer of this work of the Vida station from Loreauville to New Iberia, where it is performed by clerical employees was a violation of the Agreement. The claim, which Employees term a continuing claim, asks compensation for the Senior Idle Telegrapher (Extra in preference) for each day the duties are performed by other than a telegrapher, beginning with October 25, 1961 and continuing until the work is restored to Loreauville.

Prior to the date of the claim, Carrier had petitioned the Louisiana Public Service Commission for permission to discontinue Agency service at Loreauville. A public hearing was held on December 19, 1961 and on May 8, 1962 the Commission issued an order denying Carrier's petition. This ruling has now been upheld by the State District Court in Louisiana.

The present claim is based on the theory that the work of the Vida station had always been performed by the Agent at Loreauville, and that the work belonged to the Agent at Loreauville under the principle that all station work at a one-man station belongs to the Agent. The Employees assert that such work could not be unilaterally assigned to the clerical employees at New Iberia. They charge that Carrier's action in diverting this work to New Iberia was for the sole purpose of destroying the revenue at Loreauville so that the Carrier could secure permission from the Public Service Commission to close the Loreauville station.

At the outset Carrier raises two procedural objections: (1) It contends that the claim is barred by the time limit provision of Article V, Section 1(a) of the 1954 Agreement which requires that a claim must be presented within 60 days from the date of the occurrence on which it is based. It asserts that the claim is based on a single act of Carrier which occurred only once, namely the designation of New Iberia to handle the business originating at the non-agency station of Vida and that the claim was filed some 19 months after the order took effect on June 1, 1960. To this Employees reply that the claim is a continuing one which, under Section 3 of Article V of the 1954 Agreement may be filed at any time, the only restriction being that retroactive monetary recovery is limited to 60 days immediately preceding the filing date. (2) Carrier also urges that the claim fails to comply with Article V, Section 1(a) of the 1954 Agreement in another respect, i.e., it does not name the claimant and must, therefore, be dismissed.

Finally, as to the merits, Carrier contends that neither the Scope Rule nor any other rule of the Agreement restricts Carrier in the assignment of clerical work to be handled at a particular station; that it is Carrier's prerogative to designate the station to handle business originating at an intermediate station, and that this right has never been challenged by Employees. Carrier further points out that no work originating at Loreauville has been taken from that station and that there has been no reduction in force at Loreauville; and that no employee has suffered any loss as a result of the reassignment of the work in question.

With respect to the time limit objection, it should be noted that the action complained of here is not merely the transfer of the Vida work from Loreauville to New Iberia on June 1, 1960 but the continued performance by clerks at that Station of the work which Employees contend belongs to the Agent at Loreauville. / Section 3 of Article V of the 1954 Agreement provides that:

"A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved shall, under this rule be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. . . ."

In our judgment this clearly excepts claims for continuing violations from the 60 day limit of Section 1(a). Whether the present claim was timely filed depends, therefore, upon whether it is a claim for a continuing violation.

The fundamental characteristic of a continuing violation is that as a result of some action by Carrier, a right guaranteed by the Agreement is withheld from Employees on a continuing basis. In the instant case if it is true, as alleged, that Carrier improperly transferred the Vida work from Loreauville to New Iberia, a right is withheld from Employees as long as the work continues to be performed at New Iberia. We believe this is the type of claim contemplated by Section 3 of Article V, i.e. "an alleged continuing violation", and we hold that Carrier's objection is not well taken.

Carrier's other procedural objection, i.e. that the claim is fatally defective because it does not name the claimant, is rejected for the reasons expressed in Award 16 of this Board. We there held that Article V 1(a) requires merely that the claimant be easily and clearly identifiable from Carrier's records; and that "senior idle telegrapher, extra in preference" meets the requirements of Article V 1(a).

We turn, therefore, to the merits of the claim. There is no dispute that for years prior to June 1, 1960 the Agent at Loreauville had performed all of the work involving shipments originating at Vida. Employees take the position that since Loreauville is a one-man station all agency work performed at that station belongs to the Agent and cannot be unilaterally assigned to clerical employees at another station. It is true that while this work was being performed at Loreauville it belonged to the Agent under the circumstances existing at one-man stations. But the Agent became entitled to this non-agency work from Vida only

because it was assigned by Carrier to Loreauville. There is no showing that telegraphers have acquired the exclusive right to perform this work on the basis of the Scope Rule or through tradition, custom and practice on this property. It is work of a clerical nature and, at other than one-man stations, is customarily performed by clerks.

In the absence of a limiting provision in the Agreement it is the prerogative of management to assign the work to be handled at a particular station. We can find no specific provision in the Agreement restricting Carrier in this respect. We conclude, therefore, that Carrier has the right to designate the station to handle business originating at an intermediate station and to change the point where intermediate station business is to be handled at its discretion in the interest of efficiency and economy.

Employees have charged that Carrier's sole purpose in transferring the Vida work to New Iberia was to downgrade Loreauville and reduce its revenue to such an extent that Carrier could secure permission to close the Station. If Carrier is not restricted in the assignment of such non-agency work its purpose would be immaterial. Furthermore, if that was Carrier's purpose it has been defeated by the Public Service Commission's order denying permission to close Loreauville. The protection of the public interest rests with the Commission and it has acted. Presumably Carrier would also be concerned with the public interest and although it moved the Vida clerical work to New Iberia, it continued to accept bills of lading at Loreauville for the convenience of shippers, forwarding them to New Iberia for preparation of waybills. At any rate, the action of the Public Service Commission cannot affect the rights of the parties under the Agreement. It cannot place a restriction on Carrier which Carrier has not assumed by the Contract.

Employees also argued that Vida is not really a station but only an industry track, serving the Vida Sugar Mills exclusively; that it is really a part of Loreauville and that the Vida business is really agency business belonging to Loreauville. This is not borne out by the record which shows that Vida is listed as a separate station on the list of stations published by Carrier; is in A. P. Leland's official list of Open and Prepaid Stations No. 78 and is identified by index No. 13660. Rates are based on Vida as a shipping point; and Vida is identified by Audit No. 8280 for accounting purposes so that revenue from business originating there can be identified.

SBA 506
AWARD NO. 28
DOCKET NO. 28

PAGE 5.

For the reasons expressed it is the judgment of the Board that Carrier was within its rights in transferring the work originating at Vida from Loreauville to New Iberia. The claim must therefore be rejected.

FINDINGS: That the Agreement was not violated.

AWARD

Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 506


Roy R. Ray - Chairman


D. A. Bobo - Employee Member


G. W. Johnson - Carrier Member

St. Louis, Missouri
December 13, 1963
Files 279-303
279-361