

Award No. 5765  
Docket No. TE-5778

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Livingston Smith, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY  
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS**

**STATEMENT OF CLAIM:** Claim of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Railroad Company, Missouri-Kansas-Texas Railroad Company of Texas; that:

- (1) The Carrier violated Rule 1 (d) of the applicable agreement in effect between the parties when and because it failed and refused to pay to the Agent at Holland, Texas, in addition to his regular rate of pay on February 15, 16, 20, 22 and 28, 1950, the minimum rate per day for Telegraphers as set forth in the Agreement, as a result of Welder-Foreman Warnke copying train sights at Holland, Texas, prior to the time the Agent-Telegrapher at that point came on duty on each of said dates; and,
- (2) That the Carrier shall compensate the Claimant for the difference between the amount which he was paid and the amount to which he was and is entitled under the provisions of Rule 1 (d) of the applicable agreement as a result of the Carrier's violative act on the specified dates.

**EMPLOYEES' STATEMENT OF FACTS:** An agreement bearing effective date of September 1, 1947, is in effect between the parties to this dispute, Rule 1 (d) of which reads as follows:

"Station or other employees at closed offices or non-telegraph offices shall not be required to handle train orders, block or report trains, receive or forward messages, by telegraph, telephone or mechanical telegraph machines, but if they are used in emergency to perform any of the above service, the pay for the Agent or Telegrapher at that office for the day on which such service is rendered shall be the minimum rate per day for Telegraphers as set forth in this agreement plus regular rate. Such employees will be permitted to secure train sights for purpose of marking bulletin boards only.

**NOTE:** (It is understood that 'closed offices' also means an office where other employees may be working not covered by this agreement, or an office which is kept open a part of the day or night."

At Holland, Texas, one employe covered by the above mentioned agreement and classified as Agent-Telegrapher, is employed. The assignment of

Payment of call as made to Agent-Telegrapher at Holland, Texas, account Welder Foreman getting train sight from train dispatcher on dates involved in February 1950, therefore, fully meets and complies with the requirements of the schedule agreement, understandings and settlements thereunder covering similar claims in the past, and claim for extra day at minimum rate per day for telegraphers in lieu thereof is not justified, required and supported by the provisions of the Agreement as heretofore understood, interpreted and agreed to by the parties on this property.

The Carrier respectfully requests that the Board deny the claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of Petitioner's claim, original submission and any and all subsequent pleadings.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employees or their duly authorized representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claim here is made for the difference paid by Carrier and that allegedly due account of Track Welding Foreman copying train sights prior to starting time of assignment of Agent-telegrapher at Holland, Texas, in contravention of Rule 1 (d).

The Carrier admits that a violation of the Agreement occurred but insists that the same is covered by Rule 1 (e) rather than Rule 1 (d) and as such is compensable under Rule 9 (e).

Said Rules read as follows:

**Rule 1—EMPLOYEES INCLUDED.**

"(d) Station or other employees at closed offices or non-telegraph offices shall not be required to handle train orders, block or report trains, receive or forward messages, by telegraph, telephone or mechanical telegraph machines, but if they are used in emergency to perform any of the above service, the pay for the Agent or Telegrapher at that office for the day on which such service is rendered shall be the minimum rate per day for Telegraphers as set forth in this agreement plus regular rate. Such employee will be permitted to secure train sights for purpose of marking bulletin boards only.

NOTE: (It is understood that 'closed offices' also mean an office where other employees may be working not covered by this agreement, or an office which is kept open a part of the day or night.)

"(e) No employee other than covered by this Agreement and Train Dispatchers will be permitted to handle train orders at Telegraph or Telephone offices where a Telegrapher is employed and is available or can be promptly located except in an emergency, in which case the telegrapher will be paid for the call (and the dispatcher will notify the Superintendent so proper record and allowance will be made)."

**"Rule 9—HOURS OF SERVICE.**

"(e) Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours work or less and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

It is admitted that a violation of the Agreement occurred and agreed that the orders handled were train sights and not train orders. Thus the question at issue is whether or not payment for an added day is required (Rule 1 (d)) or whether the amount due is to be computed on the basis of Rule 9 (e) for a violation of 1 (e).

Rule 1 (d) has been carried forward through several Agreements except as to the Note thereto. This was added in 1947. Rule 1 (e) has likewise appeared in the Agreement for years.

The Respondent asserts that prior to May 1938 it was never contended that the handling of train sights constituted the handling of a train order within the meaning of Rule 1 (d), but that to the contrary when employes other than telegraphers handled train orders, pay under 9 (e) and 1 (e) had been considered proper.

It was further asserted that even when claims were presented under 1 (d), settlements on the basis of pay for a call had been accepted, thus conclusively showing that the parties had by agreed interpretation and application applied 1 (e) rather than 1 (d) to similar fact situations.

The Organization takes the position that Rule 1 (d) clearly restricts handling of train sights (except for marking bulletin board) to employes coming within the effective Agreement. It is asserted that Rule 1 (e) concerns the handling of train orders, and as such is not applicable to the instant dispute, and further that Award 1657, involving the parties hereto, affirmatively supports the claim.

Rule 1 (d) provides that employes not covered by the Agreement shall not be required to perform certain enumerated functions, with the further proviso that in the event such work is performed by "others," that is, employes not covered by the Agreement, an added day's pay will be allowed. The handling of train sights by "outsiders" is specifically limited to and for the purpose of marking bulletin boards.

Evidence of record indicates that the parties hereto have considered the complained of action as arising from an emergency.

There is no contention that a telegrapher was not available or could not be located, within the meaning of Rule 1 (e).

No great weight can be placed upon the Respondent's assertion that settlements on the property are here controlling as the proper interpretation and application of the pertinent Rules.

The applicable Rule here (1 (d)) is clear and without ambiguity. The settlements as cited would not preclude the Organization from insisting upon its being presently made effective and/or applied strictly in accordance with its terms.

A prior Award of this Board likewise involving the parties hereto (Award 1657) considered similar if not identical fact situations and the Rules alleged to be here pertinent, and held that a rule having the same provisions as does Rule 1 (d) was controlling.

A much stronger premise and more compelling reasons than are here averred must exist to justify rendering this prior Award a nullity. It was not intended to be considered lightly and carelessly tossed aside.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

**AWARD**

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 21st day of May, 1952.