

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES (In Texas and Louisiana)

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 Agreement between the parties hereto when on the 5th day of March, 1953, it failed and refused to call J. L. Moreau, Jr., Telegrapher-Clerk, New Iberia, Louisiana, to perform work covered by the Telegraphers' Agreement and instead, required and permitted an employe, not covered by the Agreement, to perform such work.

2. Carrier violated the Agreement between the parties hereto when on the 9th day of March, 1953, it failed and refused to call J. L. Moreau, Jr., Telegrapher-Clerk, New Iberia, Louisiana, to perform work covered by the Telegraphers' Agreement and instead, required and permitted an employe, not covered by the Agreement, to perform such work.

3. Carrier violated the Agreement between the parties hereto when on the 16th day of March, 1953, it failed and refused to call J. L. Moreau, Jr., Telegrapher-Clerk, New Iberia, Louisiana, to perform work covered by the Telegraphers' Agreement and instead, required and permitted an employe, not covered by the Agreement, to perform such work.

4. Carrier shall be required to compensate J. L. Moreau, Jr., for each and every day (March 5, 9 and 16, 1953), in accordance with the Call Rule of the Agreement.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an Agreement between the Missouri Pacific Lines (In Texas and Louisiana), hereinafter referred to as Carrier or Company, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was effective March 1, 1952 and is, by reference, made a part of this Submission as though copied herein for word.

The disputes were processed and handled on the property, in the usual manner, and in accordance with the Railway Labor Act, as amended, to the highest officer designated, by Carrier, to handle such claims and denied. The disputes were handled as three separate claims, but since all involve the same issue, are included in this submission.

Awards 5181 and 5182 were rendered with the assistance of Referee Boyd and Award 5660 with the assistance of Referee Wycoff.

In Award 6784 your Board stated: "Study of the docket in the earlier case reflects that the same awards were cited as controlling and, in substance, the same arguments were made. We find no glaring error in Award 6487 such as to justify reversal."

The foregoing statement is equally applicable in the case under consideration by substituting "Awards 5181, 5182, 5660" for "Award 6487."

The Carrier has hereinabove cited several other awards, all of which *denied the contentions and claims of the Employees in cases involving telephone communications.*

Awards 652 and 700, cited, were rendered without the assistance of a referee.

Award 1145 was rendered with the assistance of Referee Sharfman.

Award 4050 (which involved messages directing that cars be picked up) was rendered with the assistance of Referee Fox.

Award 4208 was rendered with the assistance of Referee Robertson.

Award 4265 was rendered with the assistance of Referee Shade.

Award 4280 was rendered with the assistance of Referee Carter.

Of the ten awards hereinabove cited seven were rendered by different referees and two without the assistance of a referee. This consensus as expressed in these several awards would seem to definitely and conclusively dictate a denial of the Employees' contention and claims in the instant case.

The Carrier feels that the three awards previously rendered on this property are in themselves sufficiently controlling to justify a similar denial in the case here involved.

The substance of matters contained herein has been discussed in conference and/or correspondence between the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization herein alleges that the Carrier violated the March 1, 1952, Agreement of the Parties when, on March 5, 9, and 16, 1953, the Agent-Phoner at Arnaudville, Louisiana, telephoned instructions to New Iberia, Louisiana, for the picking up of cars at blind sidings between Arnaudville and New Iberia, Louisiana. While a Telegrapher-Clerk is stationed at New Iberia, he had ended his regular tour of duty before each of the three messages was sent. In two of the three instances the message was received by a clerk at New Iberia; in the third instance the message was received by a conductor at that point. The Organization states that in each of the instances Claimant J. L. Moreau, Jr., the regularly assigned Telegrapher-Clerk at New Iberia, was available and willing to accept a call to perform the work of receiving the messages. The Organization contends that the Carrier violated the Agreement in each of the three instances since the messages were received at New Iberia by persons not covered by the Telegrapher Agreement. The Organization now requests that the Carrier be required to compensate Claimant Moreau under the Call Rule of the Agreement for each of the three instances.

The Carrier defends that the same general issue involved herein has previously been decided by this Board in Awards 5181, 5182, and 5660, all involving this same Carrier and this same Organization, and involving the same rules involved herein. The Carrier relies primarily on Award 5182.

In that regard, the Employees' Statement At Hearing admitted that "It is true that the messages introduced in evidence in Award 5182 were similar in character to the messages involved herein." Award 5182 was a denial Award, as were Awards 5181 and 5660. These Awards were rendered before the March 1, 1952, Agreement was signed by the Parties. The Organization was aware of their existence. Said Agreement contains no change respecting their applicability.

The result reached in Award 5182, which is given some additional support by Awards 5181 and 5660, makes the following statement in Award 6833 relevant here:

"In the instant case, the following is applicable: 'Unless palpably wrong this Board is never warranted in overruling, in a subsequent dispute between the same parties, a previous award construing the identical provisions of their contract.' See Awards 2517, 2526."

While there are some distinctions between the present case and the cases covered by Awards 5181, 5182, and 5660, those distinctions are not sufficiently significant to entitle this Board to sustain the present claim in the face of said Awards, which definitely are not "palpably wrong."

The denial Award herein is based upon controlling precedent on this same property and is not intended to be taken as an indication of how this Board might decide a similar issue on some other property.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June, 1957.