

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Railroad that:

1. The Carrier violated Scope Rule 1 (a) and (d) of the Telegraphers' Agreement when in the following instances it permitted or required employes other than covered by the Agreement to handle train orders in the absence of emergencies; and that

2. Because of such violations claimants specified shall be compensated a day's pay at the minimum rate per day for Telegraphers as set forth in the agreement, plus their regular rate for each violation on each date shown below:

Date	Location	Handled By	Claimant Operator
2-25-62	Erie, Kansas	Fireman Hill	R. G. Smothers
2-28-62	Coffeyville, Kansas	Condr. White	C. W. Meador
3-2-62	Parker, Kansas	Bkman. Roscob	W. R. Ryman
3-7-62	Lindale, Missouri	Asst. Supt. O'Brien	L. H. Keele
3-10-62	Moran, Kansas	Condr. Redden	A. W. Redding
3-10-62	Moran, Kansas	Condr. Redden	A. W. Redding
3-13-62	Moran, Kansas	Condr. Redden	A. W. Redding
3-17-62	Moran, Kansas	Condr. Redden	A. W. Redding
3-21-62	Moran, Kansas	Condr. Quarles	A. W. Redding
3-22-62	Moran, Kansas	Condr. Matney	A. W. Redding
3-1-62	Vinita, Oklahoma	Crewman	J. F. Miles
3-11-62	Chetopah, Kansas	Crewman	L. T. Beverly
3-23-62	Hiattville, Kansas	Condr. Schmitt	J. H. Findley
3-30-62	Moran, Kansas	Condr. Redden	A. W. Redding
3-30-62	Moran, Kansas	Condr. Redden	A. W. Redding

Date	Location	Handled By	Claimant Operator
4-4-62	Calhoun, Missouri	Condr. Krause	Q. W. Schroer
4-5-62	Ladue, Missouri	Condr. Krause	C. J. Harris
4-5-62	Russell, Oklahoma	Bkman. Gard	W. Neill
4-6-62	Angola, Kansas	Condr. White	C. W. Meador
4-13-62	Dunlay, Kansas	Bkman. Roscob	W. R. Ryman
5-19-62	Moran, Kansas	Condr. Matney	A. W. Redding
5-26-62	Moran, Kansas	Condr. Springer	A. W. Redding
5-26-62	Moran, Kansas	Condr. Doyle	A. W. Redding
6-2-62	Moran, Kansas	Condr. Geib	A. W. Redding
6-1-62	Coffeyville, Kansas	Condr. White	C. W. Meador
6-7-62	Moran, Kansas	Condr. Doyle	A. W. Redding
*6-14-62	Moran, Kansas	Condr. Doyle	A. W. Redding
6-14-62	Vance, Kansas	Condr. Bush	W. R. Rymer
6-17-62	Kincaid, Kansas	Trmstr. Berglund	A. H. McCarty

*Reporting train.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, which by this reference is hereby placed in evidence, provides:

"RULE 1. EMPLOYES INCLUDED

(a) These rules and working conditions will apply to Agents, Freight Agents, or Ticket Agents, Agent-Telegraphers, Agent-Telephoners, Relief Agents, Assistant Agents, where they have charge of station, take the place of or perform the work of an Agent, Telegrapher, Telephone Operators (except Switchboard Operators), Towermen, Levermen, Tower and Train Director, Block Operators, Staffmen, Operators of mechanical telegraph machines, used for receiving and transmitting messages, Manager Wire Chiefs, Wire Chief Telegraphers, and Car Distributors where the position requires knowledge of the duties of a telegrapher or the handling of messages by telephone (synonymous terms), all of whom are hereafter referred to as employees.

* * * * *

(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 making 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 in an office which is kept open a part of the day or night.)

One claim as listed in the Statement of Claim by the Petitioner to the Board is for alleged agreement violation at Coffeyville, Kansas, June 1, 1962, where a telegrapher is employed and the claimant is shown as C. W. Meador, but no such claim has been presented to and handled with the Carrier as provided in Article V, Carriers' Proposal No. 7, August 21, 1954, Agreement, the amended Railway Labor Act, or Circular No. 1 October 10, 1934, National Railroad Adjustment Board. This alleged claim is not therefore properly before the Board.

A claim on behalf of Agent-Telegrapher A. W. Redding, Iola, Kansas, for alleged agreement violation at Moran, Kansas, where no agent or telegrapher is employed, June 1, 1962, was presented to and handled with the Carrier but that claim is not listed in the Statement of Claim by the Petitioner to the Board, and it is not therefore before the Board here.

Attached hereto and made a part hereof is copy of correspondence exchanged by the parties covering the alleged claims as presented to and handled with the Carrier on the property. Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: Reference is made to our decision in Award Number 14659, for the basis of our decision herein. Under such authority all claims here are denied except as follows: R. G. Smothers is allowed a call for the violation of 2/25/62 at Erie, Kansas; J. F. Miles is allowed a call for the violation of March 1, 1962 at Vinita, Oklahoma and L. T. Beverly is allowed a call for the occurrence at Chetopah, Kansas on March 11, 1962. The Carrier nowhere shows in the record that it discharged its burden of attempting to contact such Claimants for the calls.

The claim of C. W. Meador for a violation at Coffeyville on June 1, 1962 is rejected because not presented on the property. The claim of A. H. McCarty for a call on June 17, 1962 is declined because of insufficient showing he was the proper claimant for such occasion.

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

That the parties waived oral hearing;

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 Agreement was violated only to the extent indicated in our Opinion.

AWARD

All claims denied except as shown in Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of July 1966.

**CARRIER MEMBERS' DISSENT TO AWARD 14662
DOCKET TE-14075 (Referee Brown)**

We concur with this opinion except insofar as a call is allowed on specified dates to which we dissent for the reasons outlined in dissent to Award 14656.

**W. M. Roberts
G. L. Naylor
C. H. Manoogian
R. A. DeRossett
H. K. Hagerman**