



Award No. 15669
Docket No. TE-14905

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

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

1. Carrier violated the Scope Rule 1 of the Telegraphers' Agreement in allowing or requiring Conductor James, in charge of work train, who came to dispatcher's phone at Devine, Texas about 7:20 P. M., December 26, 1962 and OS'd his train as follows: Arrived at Devine 6:00 P. M., tied up 6:30 P. M. He attempted to transmit his delay report to the dispatcher but was told to leave it for the telegrapher.

2. Carrier shall compensate Agent-Telegrapher L. J. Verhunce, Devine, Texas, one call, three hours at \$2.67 or \$8.01.

EMPLOYEES' STATEMENT OF FACTS: Claimant, Agent-Telegrapher L. J. Verhunce, is the regular assigned agent-telegrapher at Devine, Texas. Claimant Verhunce is the only employe at the one-man agency at Devine, Texas and has assigned hours of 8:00 A. M. to 12:00 Noon and 1:00 P. M. to 5:00 P. M., with a meal period assigned from 12:00 Noon to 1:00 P. M. He is assigned Monday through Friday with rest days Saturday and Sunday.

On Wednesday, December 26, 1962, Conductor James, in charge of work train, arrived at Devine, Texas and decided to tie up the work extra at this location. The operator was not on duty and Conductor James did not call Claimant Verhunce to perform the work but used the telephone to call the dispatcher and advise him that he had arrived at 6:00 P. M. and tied up at 6:30 P. M. When Conductor James attempted to transmit his delay report, the dispatcher stopped him and informed Conductor James to leave the report with the telegrapher, meaning Agent-Telegrapher Verhunce, who was not on duty and would report for duty the next morning at 8:00 A. M.

It was the Employees' position that Conductor James performed the work of the telegrapher, Claimant Verhunce, when he transmitted the report on the

(b) The conductor of the work train was Conductor Mundine.

(c) The engineer on the work train was Engineer James.

(d) The work extra did not tie-up at 6:30 P. M. as the Employees allege; however, the Agent-Telegrapher at Devine did telephone the tie-up the morning of December 27, 1962, and the figure in the block provided on the train sheet for the delay report shows the work extra tied up at 7:20 P. M. and not 6:30 P. M.

(e) No figure was written in the space provided for the "OS" on the dispatcher's train sheet for December 26, 1962.

Division Trainmaster M. H. Cunningham's letter dated May 21, 1964, is attached hereto as Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: A conductor of a work train that had just been tied up used the telephone to report to the dispatcher the following information: "Arrived at Devine 6:00 P. M. tied up 6:30 P. M." The dispatcher apparently advised the conductor to allow the agent-telegrapher to handle this tie-up information. The agent-telegrapher was not then on duty and was not called to perform this work.

Rule 2(c) of the Telegraphers' Agreement provides, in pertinent part, as follows:

"RULE 2.

HANDLING TRAIN ORDERS, ETC.

* * * * *

(c) . . . nor will train and engine service employees be required or permitted to . . . report trains by telephone or telegraph, except in emergencies. . . ."

Reporting trains is explicitly recognized by Rule 2(c) as work reserved to the Telegraphers. Train and service employees cannot even be permitted to report trains, except in emergencies. The sole issue in this proceeding is whether the communication was equivalent to a train report. The Board finds that it was.

It is not significant that the dispatcher did not request this train report from this improper source. Rule 2(c) simply does not permit train and engine service employees to make these reports. Nor was it necessary for the Employees to establish that the Carrier made use of the reported information. See Award No. 14 (Ray) of Special Board of Adjustment No. 506.

The Carrier attempted to interject new issues of fact into this proceeding after the Employees had instituted proceedings before this Board. Since these facts, and any issues they might raise, had not been raised during the progress of the claim on the property, they are not properly before the Board and cannot be considered. See Awards 11882 (Christian), 13029 (Hall) and 13139 (Engelstein).

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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1967.