

Award No. 15670  
Docket No. TE-15012

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Thomas J. Kenan, Referee

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**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:

**CLAIM NO. 1**

1. The Carrier violated the Telegraphers' Agreement of March 1, 1952 when it permitted Conductor Garsee on train No. 895, New Iberia, Louisiana to Port Barre, Louisiana and No. 894, Port Barre, Louisiana to New Iberia, Louisiana on February 25, 1962 to make switch lists (one for No. 392 and one for 393) at Port Barre, Louisiana covered by the Telegraphers' Agreement.

2. The Carrier shall compensate the agent-telegrapher, Mr. N. D. Watson, Port Barre, Louisiana for this violation in the amount of one call of 2 hours' punitive time on this date for this violation.

**CLAIM NO. 2**

1. The Carrier violated the Telegraphers' Agreement of March 1, 1952 when it permitted and allowed Conductor No. 393, Sunday, March 18, 1962 to furnish a check and switch list for No. 363 at Port Barre, Louisiana to pick up by.

2. The Carrier shall compensate Mr. N. D. Watson, agent-telegrapher, for this violation in the amount of a call of 3 hours at punitive rate of pay account being on the second rest day for that position.

**EMPLOYEES' STATEMENT OF FACTS:** As the Employees have explained in their notice, originally there were six separate individual claims submitted under ORT file 3778 to your Board. These claims were withdrawn for submission to Special Board of Adjustment No. 506 and later it was decided, by mutual agreement, to hold these claims in abeyance pending the

No. 393 left his switch list and waybills in the waybill box for the use of the conductor of No. 363 to pick up by as has been the practice in the past. The conductor of No. 393 had previously prepared the list when the cars were a part of his train and as has been customary when cars are set out at a station a list of the cars and waybills accompanying them are left in a waybill box at times when the agent or the station force is not on duty.

6. In both instances (Claim No. 1 and Claim No. 2) the switch list was prepared by the conductor setting the cars out at Port Barre. In the case covered by Claim No. 1 two lists were prepared because of cars destined to different points; however, the lists covered one set out and was prepared by the conductor of No. 895 for the convenience of the conductors of Nos. 392 and 393 who were to pick the cars up at Port Barre. In the case covered by Claim No. 2, only one list was prepared by the conductor of No. 393 on cars set out by him at Port Barre.

7. In the progression of both claims on the property, the Employees took the position that the preparation of switch lists for use of conductors to pick up by is work that is assigned exclusively to the agent. No rule was cited by the Employees to support such a contention, but rather a citation of Third Division Award 7590.

8. The Carrier denied the claims based on Carrier's contention that the preparation of switch lists is not work that is covered by the Scope of the Telegraphers' Agreement, nor had the Employees established such an exclusive right to perform this work by either custom or practice.

**OPINION OF BOARD:** On two occasions at the one-man station at Port Barre, Louisiana, a conductor of a train arriving when the agent-telegrapher was off duty prepared switch lists and left them in the waybill box for the use of other trains that would be coming through that station.

The Employees base their claim on the contention that all station work at a one-man station belongs to the agent-telegrapher who works there. They cite Award Nos. 7590 (Larkin), 6975 (Carter), Award No. 1 (Ray) of Special Board of Adjustment No. 506, and others.

They argue that the preparation of the switch lists in question was "station work" and thereby reserved to the agent-telegrapher.

The Carrier contends that all work at a one-man station is not necessarily reserved to the agent-telegrapher who works there. They contend that the custom and practice at the one-man station in Port Barre, Louisiana, has in fact been for conductors to prepare switch lists when the agent-telegrapher was not on duty.

The Employees have established by proof only that the switch lists in question were prepared by conductors of trains and not by the agent-telegrapher. There is no proof advanced that the work in question is that type of work known as "station work" at this particular station, although the theory of the claims depends upon such being established.

While the Employees may have assumed that this Board would take judicial notice that the preparation of switch lists is "station work," the Board cannot do so. The Carrier has challenged this characterization of the nature of

preparing switch lists at Port Barre, Louisiana when it asserted that it has long been the practice there for conductors to prepare these lists for the use of other trains that arrive and move cars before the agent-telegrapher comes back on duty.

The Employees have the burden of proving every element of their claims that is not accepted by the Carrier. For failure of proof, these claims must be dismissed.

**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 no violation of the Agreement has been established.

#### AWARD

Claims dismissed.

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.