



Award No. 15738
Docket No. TE-15276

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. The Carrier violated the Telegraphers' Agreement of March 1, 1952, when it permitted Clerk Gremillion at New Iberia, Louisiana to copy the following message:

"May 10, 1963

Condr. No. 894, Liv. Turn.

Should be 11 mty bxs at Port Barre tonight for New Iberia, bring them to New Iberia, tomorrow there should be twenty or more bxs at Port Barre for New Iberia, leave them at Port Barre until Tuesday morning.

/s/ G. C. Smith"

2. The Carrier shall compensate Telegrapher-Clerk Mr. J. K. Briley, New Iberia, Louisiana, for one call of 2 hours at punitive rate of \$3.8592, a total of \$7.71/84 for this violation.

EMPLOYEES' STATEMENT OF FACTS: On May 10, 1963, Trainmaster Smith transmitted the following message which was copied by Clerk Gremillion at the yard office at New Iberia, which was given to the conductor on Train No. 894 regarding the handling of the empty box cars at Port Barre:

"May 10, 1963

Condr. No. 894, Liv. Turn

Should be 11 mty bxs at Port Barre tonight for New Iberia, bring them in to New Iberia, tomorrow there should be twenty or more bxs at Port Barre for New Iberia, leave them at Port Barre until Tuesday morning.

/s/ G. C. Smith"

Dear Sir:

Reference to your letter of October 23, 1963, file F-6-387, appealing from decision of General Manager D. J. Smith claim of Telegrapher-Clerk J. K. Briley, New Iberia, Louisiana, for one call alleging that on May 10, 1963, a clerk at New Iberia copied a message.

Your statement of claim contains a message which is alleged to have been transmitted by Trainmaster G. C. Smith to a clerk located at New Iberia relative to the handling of empty box cars from Port Barre to New Iberia on Local 894. Our investigation developed that Trainmaster Smith did telephone a clerk at New Iberia and instructed him to have the local pick up eleven empty box cars at Port Barre and take to New Iberia, but the trainmaster did not send a message. The message you have set forth in your statement of claim does not indicate the time or place from which sent.

Claim No. 3 and Claim No. 4 of Award No. 21, Special Board No. 506, do not lend support to the instant claim. The facts in this dispute are similar to those covered in Third Division Award 5181 which was a denial award.

In view of the foregoing, claim is respectfully declined.

Yours truly,

/s/ B. W. Smith"

OPINION OF BOARD: On May 10, 1963, Trainmaster Smith transmitted the following communication to a clerk in the yard office at New Iberia, Louisiana:

"May 10, 1963

Condr. No. 894, Liv. Turn.

Should be 11 mty bxs at Port Barre tonight for New Iberia. bring them in to New Iberia, tomorrow there should be twenty or more bxs at Port Barre for New Iberia, leave them at Port Barre until Tuesday morning.

/s/ G. C. Smith"

The Employees contend that the receipt of this message is work reserved exclusively for them by the Scope Rule of their Agreement with the Carrier. As support for this contention, they cite Award 21, Special Board of Adjustment No. 506.

The Carrier contends that the communication is not of the type reserved exclusively to the Employees, and it cites Award No. 5181 (Boyd) as its authority.

Both of the awards cited by the parties, as well as other awards of this Division, apply the same test to communications governed by the Employees' Agreement. The test is "whether it is a communication relating to the control

of transportation and, if such a kind, a record should be preserved of it." See Award Nos. 5182 (Boyd) and 10525 (Carey).

While it would seem that the communication in question in the instant dispute "relates to the control of transportation," there has been no proof offered by the Employees to support the second element of the test: whether a record should be preserved of the communication. Since the Carrier contests the Employees' assertion that the communication qualifies, it was necessary for the Employees to establish, by proof, every element of their claim. For failure of proof, the claim must be denied.

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 was established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1967.