



Award No. 15739

Docket No. TE-15389

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 Scope Rule 1 and Rule 2 (c) of the Telegraphers' Agreement when, on the 18th day of November, 1963 it required and permitted yard personnel employe in yard office, San Antonio, Texas, to report, at the request of train dispatcher R. P. Bailey, that 2nd 66 departed from San Antonio, Texas at 7:10 P. M.

2. Carrier shall compensate the senior idle telegrapher, extra in preference, 8 hours at the prevailing telegraphers' rate of pay for this violation.

EMPLOYEES' STATEMENT OF FACTS: At 7:12 P. M., November 18, 1963, train dispatcher R. P. Bailey, located at Palestine, Texas, contacted the yard office in San Antonio by telephone and requested information concerning Train 2nd 66.

The employe in the San Antonio yard office, complying with the foregoing request replied thusly:

"2nd 66 departed from San Antonio at 7:10 P. M."

Claim was made in behalf of the senior idle telegrapher, extra in preference, for 8 hours' pay for the violation. In ORT Exhibits 1 through 9, attached hereto, the Employes present the evidence of the violation that occurred. Originally the superintendent in ORT Exhibit 2 denied knowledge of any conversation with regard to 2nd 66. It is noted in ORT Exhibit 8 that Carrier takes the position that information now shows that dispatcher Bailey contacted the telegrapher on duty and secured the departure of 2nd 66 from the telegrapher on duty.

This Carrier as well as your Board is well cognizant of the communication system on railroads whereby a dispatcher's line is monitored by many telegraphers who are required to keep themselves available to receive any call that a dispatcher might desire to make. The information furnished the Organization was thoroughly reliable that the dispatcher contacted the yard office and

7. As your Board will note from the letter of the General Chairman dated November 19, 1963, initiating this claim (Carrier's Exhibit A), the Employees rely solely upon the Scope Rule and Rule 2(c) of the Agreement as support for their contentions here. Rule 1 is titled "Scope"; however, that rule does not set forth the specific work that is to be performed or is allocated to the employees coming under the provisions of the Agreement. The rule merely states that the Agreement governs the employment and compensation of positions bearing the titles as listed therein.

Rule 2(c) of the Agreement under the caption "Handling Train Orders" reads in part as follows:

"Train dispatchers will not be required nor permitted to transmit train orders or handle block by telephone or telegraph to train and engine service employees. . . ." (Emphasis ours.)

Here we are concerned with either "train orders" or "train and engine service employees" even if the assertion of the Employee was correct; therefore, the rules cited offer no support to the claim presented.

(Exhibits not reproduced.)

OPINION OF BOARD: The basis of the claim is the assertion by the Employees that, on November 18, 1963, a yard personnel employee reported by telephone to a train dispatcher that "2nd 66 departed from San Antonio at 7:10 P. M."

The Carrier denied that such a train report was ever sent. This made it necessary for the Employees to advance factual proof that the train report was sent. No such proof was ever offered. This Board cannot consider the claim.

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 claim of a violation of the Agreement has been established.

AWARD

Claim dismissed.

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.

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