

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 30th day of August 1963, it required had permitted Train Dispatcher Jones to authorize agent-telegrapher at Mart, Texas to contact Local South, Extra 727 South and issue BLOCK instructions that Extra 727 South wait at Marlin, Texas so that the two work extras and Extra North could flag into Marlin for Extra 727 South.

2. Carrier shall compensate Agent-Telegrapher W. M. Nittsche, one call, three hours at the prevailing pro rata rate at Marlin, Texas, for this violation.

3. Carrier violated Scope Rule 1 and Rule 2(c) of the Telegraphers' Agreement when, on the 30th day of August 1963, it required and permitted Train Dispatcher Edmiston to authorize telegrapher at Valley Junction, Texas to locate No. 67 by radio and report No. 67's position. No. 67 reported his train at New Baden (a blind siding) at 10:50 P. M., which information was relayed to the train dispatcher.

4. Carrier shall compensate senior idle telegrapher (extra in preference) eight hours at the prevailing telegraphers' rate for this violation.

EMPLOYEES' STATEMENT OF FACTS: Marlin, Texas is located on the Fort Worth Subdivision of the Missouri Pacific Railroad, Gulf District, 133.6 miles south of Fort Worth, Texas. The position of agent-telegrapher negotiated under the Agreement has assigned hours of 8:00 A. M. to 5:00 P. M. with a meal period from 12:00 Noon to 1:00 P. M., six days per week, Monday through Saturday, with assigned rest day of Sunday.

At or about 6:00 P. M., August 30, 1963, Assistant General Manager D. E. Walker on a work train south of Marlin, contacted the train dispatcher

During the conference we discussed the facts involved on the date in question and found that all of the services upon which these claims are based were performed by a telegrapher subject to the provisions of the Agreement between this Carrier and the ORT. We have reviewed the provisions of the Agreement relied upon by you but do not find therein any rule which prohibits a telegrapher from talking over the radio to train or engine service employes, nor do we find any provision which prohibits the telegrapher from reporting the location of a train to the dispatcher. Our position is based upon the interpretation of Rule 2 (c) of the Telegraphers' Agreement which was fully explained to you during the conference.

You took exception to the statement contained in the second paragraph of our letter of November 25, 1963, to the effect that this Carrier does not recognize claims for 'Senior idle telegrapher (extra in preference)' as valid because the employe involved has not been named in compliance with Article V, Section 1 (a) of the August 21, 1954 Agreement. In this connection your attention is respectfully directed to Award 11754, recently issued by the Third Division, National Railroad Adjustment Board, Referee Hall, which held that such language is not in compliance with Article V of the National Non-Op Agreement of August 21, 1954, and rejected awards have held such language to be in compliance with said Article of the National Agreement setting forth his reasons therefor. We have previously cited other awards of the Third Division which held such language does not meet the requirements of said National Agreement.

For these reasons we can find no justification for changing the decision given to you in our letter of November 25, 1963, which is hereby affirmed and these claims respectfully declined.

Yours truly,

/s/ B. W. Smith"

OPINION OF BOARD: There are two claims, each allegedly arising from a violation of Rule 2(c) of the Agreement. The essential facts are not disputed.

The first claim is based upon the proposition that Rule 2(c) was violated when a train dispatcher directed the telegrapher at Mart to radio certain block instructions to Extra 727 South. The Employes contend that the telegrapher at Marlin should have performed this work.

Nothing in Rule 2(c) prohibits telegraphers from contacting train and engine service employes for the purpose of relaying block instructions. The prohibition is against train dispatchers. As for the actual work at the Marlin station connected with the block that occurred, it is undisputed that this was all performed by the telegrapher at Marlin (the claimant), and that he was paid for this work. This claim must be denied.

The second claim is based upon the proposition that Rule 2(c) was violated when a train service employe reported his train's position by radio to a telegrapher. Award No. 11, 14 and 22, Special Board of Adjustment No. 506, are cited as authority for this proposition.

Nothing in said Awards No. 11 and 14 support this proposition. As for Award No. 22, this Board in its Award No. 15740 found that such award was palpably erroneous and refused to follow it. For the reasons stated in Award No. 15740, this Board again holds that Rule 2(c) does not prohibit train and engine service employes from advising telegraphers, by radio, of the position of their trains. These communications do not constitute "train reports." This 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 Employes involved in this dispute are respectively Carrier and Employes 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 occurred.

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.