

Award No. 15747
Docket No. TE-16164

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
(Gulf District)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Missouri Pacific Railroad (Gulf District) that:

1. Carrier violated Telegraphers' Agreement (Rule 2) when at 5:10 P. M., September 28, 1964 train dispatcher R. P. Bailey instructed Agent-Telegrapher J. R. Hancock at Kyle, Texas, to call long distance to Buda, Texas and ascertain if the local was at Buda. Mr. Hancock called the Buda Grocery and Market as instructed and was told the local was in the siding at Buda which information was passed on to the train dispatcher.

2. Carrier shall compensate the oldest extra telegrapher or senior telegrapher on rest day in this locale 8 hours at extra telegrapher rate for this violation.

EMPLOYEES' STATEMENT OF FACTS: Buda, Texas is located on the Palestine Division, 54 miles north of San Antonio, Texas. This was formerly an agent-telegrapher position under the Agreement on a five day per week assignment. The position was abolished in 1962 and reduced to a non-communication point. There are phone booths located at each end of the siding for emergency purposes only.

Kyle, Texas is located 6.8 miles south of Buda, Texas. There is one position under the Agreement at this location, that of agent-telegrapher with assigned hours of 8 A. M. to 5 P. M., with a meal hour from 11:30 A. M. to 12:30 P. M. and assigned rest days of Saturday and Sunday.

On Monday, September 28, 1964, at 5:10 P. M. train dispatcher R. P. Bailey located in Palestine, Texas, called the agent-telegrapher at Kyle and requested that he call someone at Buda and ascertain the whereabouts of the local train. Agent-telegrapher J. R. Hancock, regularly assigned at Kyle, called the Buda Grocery and Market, who informed Mr. Hancock that the local was

position that Rule 2 of the Telegraphers' Agreement prohibited the dispatcher from securing information from a telegrapher concerning the location of a train when the train is not within sight, or sound, of the telegrapher's ear without means of mechanical or electronic aid. In this instance, the telegrapher used a telephone. The Employees were not specific as to just what portion of Rule 2 was violated by the agent-telegrapher's use of the telephone. The information requested by the dispatcher was secured and furnished the dispatcher by a telegrapher. This fact is not in dispute.

6. The claim was progressed through all channels on the property and finally appealed to the Director of Labor Relations where it was declined by letter dated March 25, 1965, attached hereto as Carrier's Exhibit A. In declining the claim on the property, the Carrier advised the General Chairman that his claim was without support, especially so on at least three counts:

(a) The claim was invalid as the claimant had not been named in accordance with the provisions of Article V, of the August 21, 1954 Agreement.

(b) The dispatcher did not even attempt to secure a "report" of a train from a train and engine service employe, but rather instructed an employe covered by the Telegraphers' Agreement to determine where the train was located (which is not considered a "report" as that term is commonly used).

(c) The elements of a train report, "time" of departure or arrival of the local at Buda, were not furnished the dispatcher by a train or engineman, or for that matter even the agent-telegrapher who is most certainly authorized to perform such a function.

Rule 2, paragraph (c), is quoted below for the convenience of your Board:

"(c) Train dispatchers will not be required nor permitted to transmit train orders or handle block by telephone or telegraph to train and engine service employes, except in emergency; nor will train and engine service employes be required or permitted to take train orders or to block, or report, trains by telephone or telegraph, except in emergency. Emergency is defined as follows:

Casualty or accident, engine failure, wreck, obstructions on track through collision, failure to block signals, washouts, tornadoes, slides, or unusual delay due to hot box or break-in-two that could not have been anticipated by dispatcher when train was at previous telegraph office, which would result in serious delay to traffic."

OPINION OF BOARD: On September 28, 1964 Train Dispatcher Bailey instructed Agent-Telegrapher Hancock at Kyle, Texas, to telephone anyone he might know in Buda, Texas, to find out if the San Antonio-Taylor local was at Buda. Hancock called the Buda Grocery and Market, was advised by someone that the local was in the siding at Buda, and relayed this information to Train Dispatcher Bailey.

The Employees contend that whoever answered the telephone at the Buda Grocery and Market and spoke with Agent-Telegrapher Hancock made a train report.

The Board does not agree with this contention. Any train report made was made by Agent-Telegrapher Hancock when he reported back to Dispatcher Bailey. Conversations between telegraphers and grocery store personnel are not train reports. See Award No. 15740.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Rule 2(c) of the Agreement was not violated.

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.