



Award No. 15861  
Docket No. TE-15418

**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 6th day of October, 1963 it required and permitted train dispatcher at Palestine, Texas to authorize the Texas and Pacific telegrapher at Longview, Texas to contact Train No. 66 by radio and ascertain No. 66's whereabouts. Train service employes on No. 66 reported that train as passing Mile Post 56 at 3:45 A.M.

2. Carrier shall compensate the senior idle telegrapher (extra in preference) 8 hours at the prevailing telegraphers' rate of pay for violation permitted at Mile Post 56.

3. Carrier violated Scope Rule 1 and Rule 2(c) of the Telegraphers' Agreement when on the 15th day of October, 1963 it required and permitted Conductor Handley, on San Antonio-Kyle Local, from telephone booth at New Braunfels, Texas to report to Dispatcher R. P. Bailey that Train 1st 66 had departed from New Braunfels, Texas at 5:25 P.M. Further, Conductor Handley requested and secured from Dispatcher Bailey the report that Train 2nd 66 had departed from San Antonio, Texas at 6:00 P.M.

4. Carrier shall compensate Agent-Telegrapher C. J. Hodges, one call, three hours at the pro rata rate prevailing on the New Braunfels Agency position for the violation permitted at New Braunfels, Texas.

**EMPLOYEES' STATEMENT OF FACTS:** Mile Post 56 is located on the Longview Subdivision of the Missouri Pacific Railroad, Gulf District, 56 miles north of Palestine, Texas. There are no communication facilities at this location.

hours' pay on October 6, 1963, when it is alleged dispatcher at Palestine contacted Train No. 66 by radio through the T&P telegrapher at Longview, and claim on behalf of Agent-Telegrapher C. J. Hodges, New Braunfels, Texas for one call on October 15, 1963, when it is alleged that the Telegraphers' Agreement was violated when Conductor Handley on the San Antonio-Kyle Local requested information concerning 2nd 66.

As you were advised during conference, the facts in this dispute are in conflict so far as the claim of October 6, 1963, is concerned. We were unable to resolve the conflict of facts. As for the claim of October 15, 1963, the conductor inquired as to the departure of 2nd 66 to determine where to eat.

In view of the foregoing, we cannot change our original decision dated February 24, 1964, declining the claims.

Yours truly,

/s/ B. W. Smith"

Under date of June 3, 1964, the Employees advised the Carrier that the decision of the Director of Labor Relations dated April 3, 1964, was rejected and that they would appeal to their Bureau for further progression of the claims.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This award embraces two claims.

The first claim is based upon asserted facts which are unsupported by any evidence, and disputed by the Carrier. The Employees have wholly failed to make a prima facie case, and this claim must be dismissed.

The second claim is based upon a telephone conversation between Train Conductor Handley and Train Dispatcher Bailey. Conductor Handley called from New Braunfels, Texas and the conversation was the following:

"Conductor Handley: Dispatcher, this is Handley at New Braunfels. First 66 left here at 5:26 P. M. When is Second 66 going to get out of San Antonio?

Dispatcher Bailey: Thanks. Second 66 was one hour late on call and will depart from San Antonio at 6 P. M."

The first question is whether Conductor Handley's statement, "First 66 left here at 5:26 P. M.", was a train report. Rule 2(c) of the Agreement provides as follows:

**"RULE 2.**

**HANDLING TRAIN ORDERS, ETC.**

(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 employees, except in emergency; nor will

train and engine service employees 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 anticipated by dispatcher when train was at previous telegraph office, which would result in serious delay to traffic."

Conductor Handley was a train service employee and, therefore, within the terms of Rule 2(c) and the information he relayed to the dispatcher, "First 66 left here (New Braunfels) at 5:26 P.M.", was of the type and quality normally associated with a train report. A severely literal interpretation of the words in Rule 2(c) would result in a finding that Rule 2(c) had been violated. In addition, the Employees contend that such a finding is supported by Awards No. 3812 (Douglass) and No. 14, Special Board of Adjustment No. 506 (Ray).

The Board does not find that Rule 2(c) was intended to cover this situation. Rule 2(c) first requires that, except in emergencies, a person covered by the Agreement must act as an intermediary between train dispatchers and the train and engine service employees to whom the train orders or block messages are directed. While the phrase "to whom the train orders or block messages are directed" does not appear in Rule 2(c), it would seem obvious that this qualification of the phrase "train and engine service employees" is intended. A more expansive meaning of "train and engine service employees" is just as meaningless as is the delivery to the conductor of Train No. 1 of a train order meant for Train No. 99. Rule 1(c) next restates this same requirement from the reference point of the train and engine service employees, adding the additional coverage concerning train reports. The Board accordingly finds that the absolute prohibition of Rule 2(c) with respect to train reports is against train and engine service employees' reporting their own trains, just as the prohibition is against their receiving train orders or handling block with respect to their own trains. The Board holds that Conductor Handley did not violate Rule 2(c) by transmitting information, of train report quality, about a train not his own.

This analysis of Rule 2(c) is consistent with Award No. 15669 (by this referee) and is not inconsistent with the holdings in the awards cited by the Employees. Award No. 3812 did not concern a train or engine service employee, and the decision sustaining the claims was based upon a violation of the Scope Rule of the applicable agreement. Award No. 14, Special Board of Adjustment No. 506, also did not concern a train or engine service employee, and the decision sustaining the claim mentioned the Scope Rule (as well as Rule 2) as authority for the decision. However, Award No. 15669 (by this referee) did concern a train service employee reporting his own train to a dispatcher, and in such an event, it is immaterial that the report was unsolicited and unrecorded.

Awards No. 3812 and No. 14, Special Board of Adjustment No. 506, are, nevertheless, authority for the possibility that Conductor Handley violated Rule 1, the Scope Rule, when he volunteered to the train dispatcher information of train report quality concerning another train. Both of these cases involved a train dispatcher's requesting train report information from persons

not covered by the Agreement—in Award No. 3812 from a section foreman, and in Award No. 14 from a bridge tender. The Board correctly found a violation in each instance. Obviously, the train dispatchers in these two cases needed the train report information for their control functions, or they would not have taken the trouble to request the information.

In the case at hand, the train dispatcher did not solicit the information. The information came in the form of a gratuity from a person whose interest in calling the dispatcher was in arranging for a time for his crew to eat. There has been no showing that the information was needed, used, or recorded by the dispatcher.

Rule 1 reserves to those covered by the Agreement the transmission of communications relating to the control of transportation, of which communications a record should be preserved. Awards No. 5181 (Boyd), 5182 (Boyd) and 15668 (Kenan). There are two requirements, and both must be met. The Carrier has asserted that Conductor Handley's remarks about First 66 were frivolous to the control of train operations and that no record was or should have been made of this. The Employees have advanced no proof to counter this and to support a finding of a violation of Rule 1. The claim must be denied. See Award No. 43, Special Board of Adjustment No. 305, for the similar disposition of claims involving unsolicited communications requesting train movements.

**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 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 20th day of October 1967.