



Award No. 15862
Docket No. TE-16094

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

MISSOURI PACIFIC RAILROAD COMPANY

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 the Agreement between the parties when on the 14th, 20th and 22nd days of November 1964, it required and permitted B. P. Sowers, an outsider, to transmit train order information over the telephone at Buffalo, Texas to the telegrapher in "H" Office, Palestine, Texas, thereby depriving the agent-telegrapher at Buffalo of duties belonging exclusively to that position.
2. Carrier shall compensate Agent-Telegrapher M. D. Ingram, one call, three hours at the pro rata rate for each violation on each day hereinabove listed.
3. Carrier shall pay six per cent per annum on all sums due and withheld as a result of these violations.

EMPLOYEES' STATEMENT OF FACTS: Buffalo, Texas, is located on the Palestine Division of the Missouri Pacific Railroad (Gulf District) approximately 36 miles west of Palestine, Texas. There are communication facilities maintained at this point during the hours of 7:00 A. M. to 4:00 P. M., daily, except Saturday and Sunday, with meal period during the hours of 12:00 Noon to 1:00 P. M. This is a one-man station and the Agent-Telegrapher M. D. Ingram, Claimant in this claim, owns all of the work, both inside and outside the assigned hours of the position.

On or about 5:17 P. M. on November 14, 1964, Surface Gang Foreman B. P. Sowers, from a booth telephone at Buffalo, contacted the Train Dispatcher at Palestine, Texas, and informed the Dispatcher that he desired to transmit a train order change. The Dispatcher rang the Telegrapher on duty in "H" Office, Palestine, and informed him to copy the train order change from the Foreman. Thereupon, Foreman Sowers transmitted the following:

"Effective now have all trains reduce speed to 25 M. P. H. MP 32 Pole 7 to MP 36 Pole 20 and take up order from MP 32 pole 7 to MP

statement,' nevertheless the Superintendent is correct. Track Foremen, Roadmasters and others have furnished identical information to dispatchers in the past; in fact, a dispute identical to this claim was progressed by your Organization to Special Board No. 305 which resulted in Award No. 8 denying twenty-one claims wherein an extra gang foreman telephoned similar information to the telegrapher at Italy, Texas. Evidently in citing the awards in your letter to the Superintendent, you overlooked the aforementioned award which involved the Telegraphers' Agreement and the practice that was in effect on the Gulf District, or you would not have progressed the instant claims. None of the awards cited in your letter involves the Agreement or practice in effect on the Gulf District; therefore, in taking a page from your book none would apply to the instant dispute.

In view of the foregoing, claim is without merit or rule support; therefore, in line with Award No. 8 of Special Board No. 305, involving the Agreement here in question, the claim is hereby declined.

Yours truly,

/s/ B. W. Smith"

9. In declining the claim, the Carrier repeatedly reminded the General Chairman of Special Board of Adjustment No. 305, Award No. 8, see Carrier's Exhibit A, involving the parties which denied identical claims, totaling 21; however, the General Chairman refused to recognize the award as precedent but rather cited awards of other properties and agreements in support of his contention.

(Exhibits not reproduced.)

OPINION OF BOARD: On three occasions, a surface gang foreman, from a telephone booth at Buffalo, Texas, telephoned the telegrapher on duty at Palestine, Texas, and advised him of information to be passed on to the train dispatcher at Palestine, which information would likely be embodied in train order changes to be issued by the dispatcher. The employees contend that such "train order information" should have been given by the surface gang foreman to the off-duty telegrapher at Buffalo for his transmission to the telegrapher at Palestine. The employees cite Rules 1 and 2 (c) of the Agreement as authority for their position as well as Award No. 17, Special Board of Adjustment No. 117.

The Carrier insists that nothing in Rules 1 and 2 (c) of the Agreement supports this view, that no evidence has been advanced to suggest that this type of work has been reserved to telegraphers through practice, tradition and custom, and that Award No. 8, Special Board of Adjustment No. 305 is contrary to the award cited by the Employees and is better reasoned.

The Board notes that the two awards of the Special Boards of Adjustment (No. 17 of 117 and No. 8 of 305) are irreconcilable and involve facts similar to those presented in the instant dispute. Both awards are precedents for this dispute.

Rule 2 (c) governs certain communications between train dispatchers and train and engine service employees. Surface gang foremen do not fall within the provisions of such rule, so only Rule 1 could support the Employees' position.

Rule 1, the Scope Rule, is general in nature. To establish that any particular work is reserved to telegraphers by Rule 1, it is necessary for the Employes to advance evidence to show that, by practice, custom and tradition, the work has been performed only by telegraphers. No such evidence was advanced in this instance.

The Board believes that, of the two prior awards concerning the issue at hand, the better reasoned was Award No. 8, Special Board of Adjustment No. 305. Accordingly, such award will be followed, and the instant claim will 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 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.