

Award No. 15863
Docket No. TE-16172

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 Transportation-Communication Employees' Union on the Missouri Pacific Railroad (Gulf District), that:

1. Carrier violated Scope Rule 1 and Rule 2 (c) of the Agreement when, at 7:10 P. M., December 6, 1964, it required and permitted Yardmaster at San Antonio, Texas, to report the departure of train Second 66 from that point.
2. Carrier shall compensate the Senior idle telegrapher (extra in pref.) 8 hours pro rata prevailing telegraphers' rate of pay for the outsider at San Antonio performing Telegraphers' duties.
3. Carrier violated Scope Rule 1 and Rule 2 (c) of the Agreement when, at 11:29 P. M., December 7, 1964, it required and permitted the Yardmaster at East Yard, Ft. Worth, Texas to report to the dispatcher in Palestine, Texas, that No. 141 departed from that point at 11:14 P. M.
4. Carrier shall compensate the Senior idle telegrapher (extra in pref.) 8 hours at pro rata prevailing telegrapher's rate of pay for the violation by an outsider at East Yard, Ft. Worth.
5. Carrier violated Scope Rule 1 and Rule 2 (c) of the Agreement when, at 8:25 P. M., December 11, 1964 MofW Employee Sowers, an outsider, reported to the train dispatcher in Palestine, Texas, that train No. 2 was coming into Oakwood at that time.
6. Carrier shall compensate the Senior idle telegrapher (extra in pref.) 8 hours pro rata prevailing telegraphers' rate of pay for the outsider violating the Agreement at Oakwood, Texas.
7. Carrier violated Scope Rule 1 and Rule 2 (c) of the Agreement when, at 7:05 P. M., December 18, 1964 Conductor Freeman on the

Trinity Local, an outsider, contacted train dispatcher J. S. Ford at Palestine, Texas, and reported his train tying up at 7:20 P. M.

8. Carrier shall compensate Agent-Telegrapher M. A. Carpenter, One Call, three hours' pro rata pay for the outsider violating the Agreement at Trinity, Texas.

9. Carrier violated Scope Rule 1 and Rule 2 (c) of the Agreement when, at 8:10 P. M., December 26, 1964 train dispatcher W. W. Edmiston at Palestine, Texas, instructed telegrapher at Valley Junction, Texas to secure location on Extra 448 South. Telegrapher contacted Extra 448 South who reported his position at Hearne, Texas, and further informed the telegrapher this train would reach Valley Junction, at 8:40 P. M.

10. Carrier shall compensate Agent-Telegrapher M. A. Cornelius at Hearne, One Call, three hours' pro rata rate of pay for the outsider reporting his train at Hearne.

11. Carrier violated the Scope Rule 1 and Rule 2 (c) of the Agreement when, at 7:24 P. M., it required and permitted Clerk Kirk at Taylor, Texas to secure by radio a report on Extra 916 North at Brushy Creek just north of Thorndale and transmit said information to train dispatcher W. W. Edmiston at Palestine, Texas on December 26, 1964.

12. Carrier shall compensate the Senior idle telegrapher (extra in pref.) 8 hours pro rata prevailing telegraphers' rate of pay for the outsider reporting that train's position at Brushy Creek, Texas.

13. Carrier violated the Scope Rule and Rule 2 (c) of the Agreement when, at 7:49 P. M., December 26, 1964, it required and permitted train dispatcher W. W. Edmiston at Palestine, Texas, to authorize telegrapher at Valley Junction, Texas, to secure by radio a report on Extra 916 North. Telegrapher at Valley Junction reported Extra 916 North was passing Rockdale, Texas at 7:49 P. M.

14. Carrier shall compensate Agent-Telegrapher O. M. Brockmann at Rockdale, Texas, One Call, three hours' pro rata rate of pay due to outsider reporting train passing that station.

15. Carrier violated Scope Rule 1 and Rule 2 (c) of the Agreement when, at 7:30 P. M., December 27, 1964, it required and permitted train service employe on Extra 406 North to report his train passing Round Rock, Texas, via radio and through telegrapher at Taylor, Texas.

16. Carrier shall compensate the Agent-Telegrapher at Round Rock, Texas, One Call, three hours pro rata prevailing rate for the outsider reporting train at that point.

EMPLOYEES' STATEMENT OF FACTS: The eight claims involved in this dispute all concern the reporting of trains at various locations by other than telegraphers to the dispatcher. T. C. U. Exhibits 1 through 9, attached hereto, are copies of the correspondence exchanged in the handling of the claim on the property. In T. C. U. Exhibit 1 the eight claims are set out in full detail as to

Without prejudice to Carrier's position expressed in the foregoing, it is also Carrier's position that all of the claims are without agreement support. In Claims 1, 2, 5, 7 and 8, as set forth above, a telegrapher actually reported the trains in question to the dispatcher. The reporting of a train to the dispatcher by a telegrapher is certainly no violation of the Telegraphers' Agreement. Your allegation that a yardmaster reported the trains involved in Claims 1 and 2 are merely unsupported assertions by you. In any event, telegraphers covered by the Agreement here in question have no right to report trains at Ft. Worth which is on the T&P Railway.

* * * * *

In view of the foregoing, claims are without merit or rule support and are hereby declined.

/s/ B. W. Smith"

The Employes have not submitted evidence to support the claim that the yardmaster did report the departure of 2nd 66 from San Antonio.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute embraces eight separate claims, all involving incidents contended by the Employes to have been the communication of train reports by persons not covered by the Agreement and in violation of either Rule 1 (the Scope Rule) or Rule 2 (c) of the Agreement.

CLAIMS 1 AND 2.

These two claims involve allegations that a yardmaster made a train report to a train dispatcher. The Carrier asserts that, in each case, the dispatcher did not obtain the train report from the yardmaster but from a named telegrapher. Since the facts are contested, and since the Employes failed to come forward with proof to support their case, these two claims must be dismissed for want of proof.

CLAIM 3.

This claim concerns an incident where a Maintenance of Way employe reported to a train dispatcher that Train No. 2 was coming into Oakwood at the time of the report. The Carrier asserts that the information was unsolicited and that no use was made of it.

This claim does not involve Rule 2 (c), for no train or engine service employe is involved. The claim could only be sustained under Rule 1, the Scope Rule. Since Rule 1 reserves, to persons covered by the Agreement, the communication of messages which affect the control and operation of trains, of which messages a record should be kept, it was necessary for the Employes to establish, by proof, this asserted nature of the message in question. The necessity of this proof was caused by the Carrier's assertion that the message was not solicited and that no use was made of it.

No such proof was offered, so this claim must be dismissed. See Award No. 15736.

CLAIM 4.

This claim involves a conductor's reporting to the train dispatcher that he was tying up his train at 7:00 A. M. The Carrier asserts that the report was unsolicited and that no use was made of it.

This claim falls under Rule 2 (c). The conductor gave to the dispatcher a train report concerning his own train. The provisions of Rule 2 (c) are absolute: this type of report is prohibited. It is immaterial that the report was unsolicited or not used. See Awards No. 15669 and 15745. This claim is sustained.

CLAIMS 5, 6, 7 AND EIGHT

These four claims all involve instances of a dispatcher's ordering a telegrapher to radio a train to ascertain its location. Nothing in Rule 1 or Rule 2 (c) prohibits this practice. Rule 2 (c) only requires that a person covered by the Agreement act as an intermediary between the train dispatcher and the train and engine service employees. This was done in each of these four instances. The claims must be denied. 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 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 violated in only one instance, which is described in items 7 and 8 of the Employees' Ex Parte Submission.

AWARD

Items No. 1, 2, 3, 4, 5 and 6 of the Employees' Ex Parte Submission are dismissed; Items No. 9, 10, 11, 12, 13, 14, 15, and 16 are denied; Items No. 7 and 8 are sustained.

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.