

Award No. 16945
Docket No. TE-15599

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, 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 (formerly The Order of Railroad Telegraphers) on the Missouri Pacific Railroad (Gulf District), that:

CLAIM NO. 1

1. Carrier violated the Agreement between the parties when, on the 16th day of January, 1964, at 10:00 P. M., it required and permitted MPTL Truck driver A. Maldonado, an employe not covered by Telegraphers' Agreement, to sign bill of lading for piggy-back trailer RCM-2018 at Mercedes, Texas.

2. Carrier shall compensate Agent-Telegrapher F. L. Nagy, one call, three hours at the pro rata rate of \$4.61 per hour, \$9.22 for each call, a total of \$18.44 for the violations.

CLAIM NO. 2

1. Carrier violated Agreement between the parties when on the 23rd day of January, 1964, at 10:15 P. M., it required or permitted MPTL Truckdriver Roberto Rangel, an employe not covered by the Telegraphers' Agreement, to sign bill of lading for piggy-back trailer RCM 773 at Mercedes, Texas.

Also, on the 25th day of January, 1964, at 10:20 P. M. it required and permitted MPTL Truckdriver Roberto Rangel, an employe not covered by Telegraphers' Agreement, to sign bill of lading on piggy-back trailer RCM 727 at Mercedes, Texas;

Also, on the 8th day of February, 1964, at 6:00 P. M. it required and permitted MPTL Truckdriver Ray Reid, an employe not covered by the Telegraphers' Agreement, to sign bill of lading for piggy-back trailer RCM-700 at Mercedes, Texas;

Also, on the 27th day of February (no time shown) it required and permitted MPTL Truckdriver Ray Reid, an employe not covered by Telegraphers' Agreement, to sign bill of lading for piggy-back trailer RCM-730;

Also, on the 28th day of February, 1964, at 9:30 P. M., it required and permitted MPTL Truckdriver Ray Reid, an employe not covered by the Telegraphers' Agreement, to sign bill of lading for piggy-back trailer RCM-787;

Also, on the 29th day of February, 1964, at 10:00 P. M., it required and permitted MPTL Truckdriver R. Rangel, an employe not covered by the Telegraphers' Agreement, to sign bill of lading for piggy-back trailer RCM-722.

2. Carrier shall compensate Agent-Telegrapher F. L. Nagy, one call, three hours at the pro rata rate of \$9.22 for each call. A total of \$55.32.

CLAIM NO. 3

1. Carrier violated the Agreement between the parties when on the 7th day of March, 1964, it required and permitted MPTL Truckdriver Ray Reid, an employe not covered by the Telegraphers' Agreement, to sign bill of lading for piggy-back trailer RCM-701 at Mercedes, Texas.

Also, on the 13th day of March, 1964, it required and permitted MPTL Truckdriver Robert Rangel, an employe not covered by the Telegraphers' Agreement, to sign bill of lading for piggy-back trailer RCM-709 at Mercedes, Texas.

Also, on the 21st day of March, 1964, at 9:00 A. M., it required and permitted Truckdriver Robert Rangel, an employe not covered by the Telegraphers' Agreement, to sign bill of lading for piggy-back trailer RCM-724 at Mercedes, Texas.

2. Carrier shall compensate Agent-Telegrapher F. L. Nagy, one call, three hours, at pro rata rate of \$4.61 per hour, \$9.22 for each call, a total of \$36.88 for the four violations.

CLAIM NO. 4

1. Carrier violated the Agreement between the parties when on the 27th day of March, 1964, at 7:30 A. M., it required and permitted MPTL Truckdriver Roberto Rangel, an employe not covered by Telegraphers' Agreement to sign bill of lading for two piggy-back trailers, RCM-806 and 800, at LaFeria, Texas.

2. Carrier shall compensate Agent-Telegrapher J. J. Fitzgerald one call, three hours, at call basis for this violation.

CLAIM NO. 5

1. Carrier violated the Agreement between the parties when, on the 3rd day of April, 1964, at 7:10 P. M., it required and permitted

MPTL Truckdriver E. J. Biesida, an employe not covered by the Telegraphers' Agreement, to sign bill of lading for one car Mixed Vgts. RCM-797, at LaFeria, Texas.

2. Carrier shall compensate Agent-Telegrapher J. J. Fitzgerald one call, at call basis for this violation.

CLAIM NO. 6

1. Carrier violated the Agreement between the parties when on the 25th day of January, 1964, at 7:30 P. M., it required and permitted MPTL Truckdriver Ray Reid, an employe not covered by Telegraphers' Agreement, to sign bill of lading for piggy-back trailer RCM-786, at LaFeria, Texas.

2. Carrier shall compensate Agent-Telegrapher J. J. Fitzgerald one call, at the pro rata rate of \$4.188 per hour, a total of \$8.38, for this violation.

EMPLOYES' STATEMENT OF FACTS: While there are six (6) separate claims filed on the property, the violations are identical in principle and involve the same rules and factual situations. In each instance the violation occurred at a location which was a one-man station manned by a Telegrapher. For instance, in Claim No. 1, Mercedes, Texas is located on the Mission Subdivision of the Missouri Pacific Railroad, Gulf District, 13.9 miles west of Harlington, Texas. There is an Agent-Telegrapher by the name of F. L. Nagy assigned at this location between the hours of 8:00 A. M. and 6:00 P. M. daily except Sunday. Agent-Telegrapher Nagy performs all of the work and duties at this location and is subject to call outside of his assigned hours to perform any agency work necessary.

On the 16th of January, 1964, at 10:00 P. M. and later at 10:15 P. M., the Carrier required or permitted Missouri Pacific Truck Line Truckdriver A. Maldonado and R. Reid to sign and execute bills of lading covering piggy-back loads of vegetables at a time when Agent-Telegrapher Nagy was not on duty. All of these claims are identical to the claim before Special Board of Adjustment No. 506 that resulted in Award No. 1.

Claims were appealed to the highest officer designated by the Carrier to handle claims and grievances and declined by him.

CARRIER'S STATEMENT OF FACTS:

1. There is an agreement between the parties hereto effective March 1, 1952, on file with your Board which by reference is made a part of this submission.

2. The claims before the Board as set forth in the Employees' Statement of Claim allege violation of the Scope Rule of the agreement as result of truckdrivers of the Missouri Pacific Truck Lines signing bills of lading for piggy-back trailers loaded by shippers at their place of business at Mercedes and LaFeria, Texas, to be moved via Missouri Pacific Truck Lines over the highway to Harlingen, Texas, where the trailers were turned over to the Missouri Pacific Railroad for movement out of Harlingen on a flat car over the

OPINION OF BOARD: With one exception, the facts in connection with these claims are essentially the same as those involved in the cases decided by Award No. 1 of Special Board of Adjustment No. 506 between the same parties. That Award (with a vigorous dissent) sustained the claims but noted that no consideration had been given to new evidence offered by the Carrier after the proposed award had come before the Board for adoption. In this case, in addition to timely introducing the "new" evidence, Carrier has added other evidence to reinforce its position that the involved work was not Carrier's work, but belonged to its wholly owned subsidiary, MPTL, and to show that Carrier and MPTL are not, as argued by the Organization, "one and the same."

The different fact of significance in this case is that the complained of work—signing of bills of lading by MPTL truck drivers—which in the case decided by Award No. 1 was done "at or near Edinburg (the one-man station there involved), we find here was performed by the MPTL drivers at the shippers' places of business, and find no evidence that the work was performed at the one man station. This fact brings the principles involved closer to those involved in Award No. 27 of the same Special Board of Adjustment.

Organization's entire case in Award No. 1 and in this case is based on the claim that all work at a one man station belongs exclusively to the Agent at that station. Award No. 1 apparently decided: a) that the work was work which was Carrier's work; and, b) that it was performed at the station (we are not clear just what was meant in that Award by the phrase "or near.") Since signing of bills of lading as an operation is not reserved exclusively to the Organization, but, in the case involved in Award No. 1, was found to be reserved to the agent at the one man station because all Carrier's work at a one man station is reserved for the agent at that station, in this case it would be necessary for Organization to prove that the work was performed at the station, or so close to the station as to make no difference, or to prove that the signing of bills of lading at shipper's place of business is work reserved exclusively to the Organization. In this record Organization proved neither of these as fact; and Carrier made the argument and asserted that the work was not performed at the stations in question.

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February, 1969.

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