



Award Number 17840

Docket Number TE-17116

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James R. Jones, 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:

CLAIM 1

1. Carrier violated the Agreement between the parties when, on the 10th, 17th, 20th, 22nd, 27th, 28th, 29th, 31st days of January, 1966, and on the 1st, 1st, 2nd, 2nd, 2nd, 2nd, 2nd, 3rd, 3rd, 5th, 5th, 5th, 5th, 6th, 6th, 6th, 7th, 10th, 10th, 10th days of February, 1966 it required and permitted outsiders to report trains by RADIO and telephone direct to train dispatchers in Palestine, Texas, and in one instance permitting conductor on train to receive and act on instructions pertaining to train operation as hereinbelow described.
2. Carrier shall compensate Telegrapher-Leverman at MKT Jct, One Call, for each violation permitted on January 10th and 17th, 1966; the Agent-Telegrapher at Round Rock, One Call, three hours pro rata pay for violation at that point on January 22, 1966; the Agent-Telegrapher at Navasota, Texas, One Call, three hours pro rata pay for violations at that point on January 28th, 1966; the Agent-Telegrapher at Bryan, Texas, One Call, three hours at pro rata pay for violation at that point February 10, 1966; the Agent-Telegrapher at Hearne, Texas, One Call, three hours at pro rata pay for violation at that point on February 10th, 1966; the Agent-Telegrapher at Round Rock, Texas, One Call, three hours pro rata pay for violation permitted at that point on February 2, 1966; and the Telegrapher at Laredo, Texas, three hours at pro rata pay for violation at that point permitted on February 1, 1966; the Agent-Telegrapher at Navasota, Texas, One Call, three hours pro rata pay for violation permitted on January 28, 1966 at that point; Additionally, Carrier shall compensate the Senior idle telegrapher, extra or idle on rest day, eight (8) hours pro rata pay for violations permitted at blind sidings, shown hereinbelow, on January 20th, 27th, 28th, 29th, 29th, 31st, 1966, and on February 1st, 2nd, 2nd, 2nd, 2nd, 2nd, 3rd, 3rd, 5th, 5th, 5th, 5th, 6th, 6th, 7th, 10th, 10th, 1966. When two or more violations are shown on any

given date the Carrier shall pay separately for each individual violation in the amount specified above.

3. Carrier shall compensate each claimant entitled to compensation six percent interest on all sums due and withheld as a result of this violative action.

CLAIM 2

1. Carrier violated the Agreement between the parties when, on the 11th, 12th, 13th, 14, 15th, 17th, 20th, 23rd, 27th, 28th, 29th, 29th, days of January, 1966 and on the 4th day of February, 1966, it permitted and required outsiders to said Agreement to report trains, transmit control of transportation communications by Radio, receive and transmit control of transportation communications by telephone as hereinbelow described.
2. Carrier shall compensate the Agent-Telegrapher at Sweeny, Texas, One Call, three hours pro rata pay for violations permitted on that point on January 11th, 1966; shall compensate the Agent-Telegrapher at Angleton, Texas, One Call, three hours pro rata pay for violations permitted at that point on January 12th and 13th, 1966; shall compensate Agent-Telegrapher at Vanderbilt, Texas, One Call, three hours pro rata pay for violations permitted at that point on January 15th, 17th, 20th, 23rd, 29th, 1966 and on February 4, 1966; shall compensate the Agent-Telegrapher at Bay City, Texas, One Call, three hours pro rata pay for violations permitted at that point on January 14th, 27th and 29th, 1966; shall compensate the Agent-Telegrapher at Victoria, Texas, One Call, three hours pro rata pay for violations permitted at that point on January 17th and 23rd, 1966; and lastly, Carrier shall compensate the Senior idle telegrapher on January 13th, 28th, 29th violation to trains by Radio out on line and at point where train received such instructions and acted on the same.
3. Carrier shall compensate each claimant six percent interest per annum on all sums due and withheld as a result of this violative action.

CLAIM 3

"The use of the Radio by dispr. to train improper in the manner and way being used Radio to be used by train crews on its train when train arrived at any fixed station, are to be used within yard limits and not by dispr. located at Houston, Texas."

1. The Carrier violated The Telegraphers' Agreement Rule 2 (c) when on Feb 10th Dispr dialed the Livonia turn and about "When will you be leaving Port Barre?", and O.S. was given when the Condr. answered, "I am at Arnaudville now (being 1125PM) and not arrived at Port Barre." This is strict violation of the said Agreement and the use of the Radio and this informatin given is strictly operators work.
2. The Carrier shall compenante the Senior idle telegrapher (extra in pref) eight hours (8) at pro rata rate due to violation of Rule 2 (c) and do claim in favor of Mr. R. D. Strong who was idle date.

On the claim date the dispatcher had advised the conductor of Extra 273 West that he would give him authority to occupy the main track after No. 53 passed him. The dispatcher also advised the conductor of Extra 273 that No. 53 was waiting at Erwinville for Extra 273 to get in the clear, because of his control panel indication the dispatcher knew the location of both trains as he controlled their advance by signal indication. The Employees allege that the conductor upon reporting back to the dispatcher advised that No. 53 passed him at 2:05 A.M. This allegation is material as the dispatcher had this information automatically when No. 53 passed the signal indication control point and not from the conductor of Extra 273. The only reason for the conductor of Extra 273 contacting the dispatcher again was to secure authority to open the switch to the main track which authority must be given by the dispatcher.

The information allegedly furnished the dispatcher was unneeded, unnecessary and was not recorded by the dispatcher as an "OS". The information certainly was not solicited by the dispatcher.

CLAIM No. 5

8. Claim No. 5 involves the Carrier's Palestine Division covering a total of 11 claim dates in February, 1966, and 19 conversations for which the Employees are claiming 6 call payments in the amount of approximately \$63.00 and 13 days' pay in the amount of \$295.88 for a total penalty claim of \$358.88.

The conversations that the Employees allege occurred are of a general nature, and the type that has always occurred on this property since the advent of the telephone which permitted conductors and dispatchers to converse and plan together. The Employees were apprised of this fact; however, during the handling of this dispute on the property, they offered no evidence to the contrary. Carrier's final letter of declination dated June 21, 1966 is quoted below for the convenience of your Board:

"June 21, 1966
File K-279-767

Mr. R. T. Phillips
General Chairman—TCU
P. O. Box 456
Palestine, Texas 75801

Dear Sir:

Reference to your letter dated May 6, 1966, file F-6-729, appealing from the decision of Assistant General Manager J. C. Love claim filed on behalf of Agent-Telegrapher, Rockdale, Texas, one call on February 6, 7, 8, 16; Agent-Telegrapher, Navasota, Texas, one call on February 15; Agent-Telegrapher, Buffalo, Texas, one call on February 21; and 'senior idle telegrapher, extra in preference or idle on rest day' for eight hours each day February 6, 7(2), 9, 10(2), 12, 13(2), 15, 16(2) and 20, 1966, when it is alleged that other than telegraphers used the radio and thereby violated provisions of the Telegraphers' Agreement on the Palestine Division.

It is the position of the Carrier that claims filed on behalf of 'senior idle telegrapher, extra in preference or idle on rest day' are invalid as the 'employee involved' has not been properly identified as re-

quired by Article V of the August 21, 1954 Agreement. See Third Division Award 11754.

The claim involved numerous radio conversations between train crew members and the dispatcher, and three instances alleging clerks at passenger station at San Antonio reported departure of passenger train to the dispatcher. The radio conversations which you allege occurred between the train crew and dispatcher on the claim dates are typical of telephone conversations that have always occurred between the dispatcher and train crews prior to the advent of the radio. None of the radio conversations constituted a report of any train's arrival or departure from any point. There is no provision in Rule 2(c) which prohibits a dispatcher and a member of the train crew from conversing by telephone and/or radio or any other means of communication to exchange information that may be beneficial to either party in the planning of their work.

None of the conversations controlled the movement of any train as their train orders had been issued and no new orders were issued as a result of any conversation with the trains involved.

With respect to claims involving San Antonio, the dispatcher always secures departure time of trains from telegraphers on duty in 'MS' Office at South San Antonio. There is no dispatcher's telephone circuit in the passenger station at San Antonio.

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

Yours truly,
/s/ B. W. Smith"

OPINION OF BOARD: This docket involves five claims and each of those five claims involves separate claims. We will discuss each claim separately.

Claim Number One

This claim concerns 30 separate radio/telephone conversations that allegedly involved the train service crew and/or the dispatcher at Palestine, Texas, in violation of the Agreement.

This Board reiterates that the burden of proving a violation of the Agreement is on the Petitioner unless Petitioner's allegations are accepted by Carrier.

Petitioner must show by competent evidence that the 30 separate radio/telephone conversations did, in fact, occur. Petitioner must further prove that the alleged messages involved in Claim One belonged exclusively to employees.

Carrier, both during the handling on the property and in its submission to this Board, denied any violation of the Agreement. Carrier asserted in its defense that none of the conversations were reports; that none of the conversations concerned the control of movement of trains; that all of the conversations were permitted by past practice on the property; that all the allegations were mere assertions, unsupported by competent evidence; and that there is no showing that telegraphers have exclusive right to the use of radios.

Employees rely on the Scope Rule and Rule 2 (c) to sustain their claims. Employees present awards of this Board and Special Boards to interpret that work which belongs exclusively to telegraphers under the above mentioned rules.

We think it is fair to say that to determine whether a message is exclusively reserved to telegraphers we ask whether it is a communication relating to the control of transportation and if a record is required to be preserved. We agree with Award 10525 when Referee Carey said: "A message telephone by a clerk to a train crew, which does not affect the operation of trains as do train orders and other communications relating to or affecting the safety of persons and property and which by their very nature should be made of record, would not be exclusively reserved to telegraphers."

The 30 items mentioned in Claim One, with the exception of Items 16, 27 and 30, should be denied on the grounds that employees failed to meet their burden by presenting competent evidence showing a violation of Rule 2(c). The items for which the Board denies relief either are unsupported by evidence or the employees have not shown such messages are the exclusive province of telegraphers.

This Board believes that employees established a prima facie case of violations of Rule 2 (c) in Items 16, 27 and 30 and Carrier has not adequately refuted the charges. We believe that the messages involved in the above mentioned three items were such that a record should have been made and they would affect the operation of trains to the extent that this work belonged exclusively to Telegraphers. Therefore, the Board sustains the claim in Items 16, 27 and 30 of Claim Number One.

Claim Number Two

Claim Two includes 14 separate items. The Board finds that items 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13 and 14 cannot be sustained either because Employees failed to present competent evidence, or failed to convince the Board that the messages involved comprised work belonging exclusively to Telegraphers.

That situation does not exist for items 6 and 11. The message alleged to have been transmitted in item 6 does seem to fall within the category of directing movement of trains. Carrier's defense that "such information is unnecessary in view of the fact that the block signal would perform this function" is not sufficient to rebut a presumption that Rule 2 (c) was violated.

Item 11 is clearly a violation of Rule 2 (c). Such a message does relate to the control of transportation and it is the type message for which a record should be made.

Therefore, the claims should be sustained for items 6 and 11 in Claim Two. All other items in Claim Two are denied.

Claim Number Three

This claim is denied because Employees have not convinced the Board that this is the type of message that belongs exclusively to Telegraphers.

Claim Number Four

Claim Four is denied because the Board accepts Carrier's defense that the only reason for the conductor of Extra 273 contacting the dispatcher again was to secure authority to open the switch to the main track which authority must be given by the dispatcher. Since this territory is controlled

by CTC, the dispatcher in Houston knew the location of trains. The message from the conductor did not involve the movement of trains. We cannot find a violation of the Agreement.

Claim Number Five

Claim Five includes 19 items. Claims for all items except item 7 should be denied because they are conversations of a general or informational nature which do not constitute work belonging exclusively to Telegraphers as have not successfully overcome Carrier's defense that conversations listed in all the items except item 7 of Claim Five are permitted by custom and practice on the property.

Item 7 of Claim Five should be sustained because this message clearly concerns the movement of trains and violates the Agreement.

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 to the extent indicated in the Opinion.

A W A R D

Claim Number One: Sustain claims for items 16, 27 and 30. Dismiss claims for items 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28 and 29.

Claim Number Two: Sustain claims for items 6 and 11. Dismiss claims for items 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13 and 14.

Claim Number Three: dismissed.

Claim Number Four: dismissed.

Claim Number Five: Sustain claim for item 7. Dismiss claims for items 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1970.