



Award Number 17841

Docket Number TE-17612

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:

1. Carrier violated the Agreement between the parties when, on the 26th, 27th, 28th, 29th, 30th days of September, 1966, and on the 3rd, 4th, 5th, 6th, 7th, 10th, 11th and 12th days of October, 1966, it required and permitted Trainmaster G. C. Smith, an outsider, to perform duties at Port Barre, Louisiana, that were formerly performed by Telegrapher-Clerk.
2. Carrier shall compensate Senior idle telegrapher, extra or idle on rest day, eight (8) hours pro rata pay at the rate of \$2.8928 per hour for each date hereinabove listed.
3. Carrier shall compensate each claimant six percent interest on all sums due and withheld as a result of this violative action.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Carrier required and permitted Trainmaster G. C. Smith to perform the duties of the Telegrapher-Clerk position that was formerly assigned at Port Barre, Louisiana, between the hours of 9:00 P.M. and 5:00 A.M. on the dates of September 26, 27, 28, 29, 30, and October 3, 4, 5, 6, 7, 10, 11 and 12, 1966. The evidence presented by the Employees showed that switch lists, train reports, and other communications of record were handled by Trainmaster Smith at Port Barre during the hours after the Agent-Telegrapher assigned at that location went off duty.

(b) ISSUES

1. Did the Carrier violate the Agreement in permitting a Trainmaster to perform the work of the former Telegrapher-Clerk position in the handling of communications pertaining to the operation of trains, rendering switch lists, and reporting trains as shown in the evidence presented to the Carrier.
2. Damages for the breach of the Agreement.

(c) FACTS

At Port Barre, Louisiana, the Carrier originally maintained three positions of Agent-Telegrapher and two Telegrapher-Clerks. Over the years the

For the reasons set forth above, claims are without merit or rule support and are hereby declined.

Yours truly,

/s/ O. B. SAYERS"

(Exhibits Not Reproduced)

OPINION OF BOARD: Petitioner alleges that Carrier's Trainmaster Smith violated the Agreement at Port Barre, Louisiana, by performing inter alia the following duties: making switch lists; reporting trains to the train dispatcher in Houston, Texas; and supervising the movement of trains.

Petitioner agrees that lack of evidence prevents this Board from sustaining the claim for violations on September 26, 27, 28, 29 and 30. Thus, we shall consider only alleged violations on October 3, 4, 5, 6, 7, 10, 11 and 12, 1966.

Petitioner cites evidence of switch lists made by Trainmaster Smith on October 1, 8 and 12. Since no violations are averred by Petitioner on October 1 and 8, the evidence of violations for those days will not be considered by the Board. In addition, the evidence of violations on October 8 and 13 will not be considered.

Petitioner claims that Carrier formally acknowledge that work mentioned above belonged exclusively to Telegraphers when Carrier bulletined the position on October 6, 1969. Petitioner further claims that Carrier is thereby estopped to deny that work performed by Trainmaster Smith was in fact covered by the Agreement. We fail to see from the handling on the property the merits of this argument by the Petitioner.

The Board stated in another case Award 17700 involving these same parties; "It is axiomatic that the burden of proof is on the Claimant . . . Claimant must prove all elements in its claim which are not accepted by the Carrier."

Applying that ruling to this case, Petitioner must prove that the alleged work performed by Trainmaster Smith belonged exclusively to employees.

Carrier, in its denial of the claim, stated that "switch lists are prepared by conductors, clerks as well as agents and telegrapher-clerks. Such duties have never been assigned or performed exclusively by any class or craft of employee." Petitioner failed to offer additional proof to overcome Carrier's contention.

Carrier further denied that any violation resulted from additional evidence presented by Petitioner that Trainmaster Smith asked the conductor to advise dispatcher if he had a deadhead crew and also that cars were ready for movement. Both alleged violations occurred on October 10. Carrier said there was no violation because such messages do not relate to or control transportation or trains. Petitioner failed to offer additional proof sufficient to overcome this denial by Carrier.

Carrier has denied each allegation in this claim. Petitioner has the obligation to prove every element of its case by the weight of evidence. Petitioner has failed to meet its burden of proof.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds: