

Award Number 17949
Docket Number TE-17740

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
ST: LOUIS SOUTHWESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the St. Louis Southwestern Railway, that:

1. Carrier violated the Agreement on March 1, 1965, when it caused, required or permitted employees not covered by the scope of the Telegraphers' Agreement, to transmit and receive a message between Jonesboro, Arkansas and Illmo, Missouri by telephone.
2. Carrier shall compensate Mr. W. C. Roberts, regularly assigned swing shift clerk-telegrapher at Jonesboro, for a minimum call.
3. Carrier shall compensate Mr. T. R. States, regularly assigned second shift telegrapher at Illmo, for a minimum call.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is predicated upon various provisions of the collective bargaining Agreement entered into by the parties hereto effective December 1, 1934. Employees submitted their claim to the proper officers of the Carrier, at the time and in the usual manner of handling, as required by Agreement rules and applicable provisions of law. The dispute was discussed in conference between representatives of the parties on December 17, 1965.

Following the conference and the Carrier's reaffirmation of its denial of the claim, the General Chairman proposed to the Carrier that the present claim be held in abeyance for a period of ninety days following decision by the Third Division in earlier cases appealed and assigned Dockets TE-14860, TE-14903, and TE-15238. Carrier responded that it was agreeable to extending the time limit for ninety days following date of decision in Docket TE-14860. That docket subsequently was withdrawn from the Third Division and assigned to PL Board No. 21. By agreement, and in conformity with the Railway Labor Act, PL Board No. 21 was created to adjust numerous disputes between the parties. Docket TE-14860 was listed among those disputes as Case No. 23. The National Mediation Board assigned Mr. Don J. Harr to act as chairman and neutral member of PL Board No. 21.

The dispute listed as Case No. 23 was decided by the PL Board on November 16, 1967. It was designated Award No. 15 and sustained the claim. On December 28, 1967, the General Chairman requested the Carrier to allow the present claim on the basis of the decision in Award No. 15. Having

OPINION OF BOARD: The basic issue is whether or not the "change report" was sent by a telegrapher at Jonesboro, Arkansas to a telegrapher at Illmo, Missouri.

On April 27, 1965 the General Chairman wrote to the General Superintendent stating that a clerk at Jonesboro transmitted a "change report" to a clerk at Illmo by telephone. The Superintendent replied on June 18, 1965 in part as follows:

"The facts are the change report in question was filed with the telegrapher at Jonesboro who transmitted same on the teletype at 5:30 A.M., March 1, 1965, numbered SO-14, VJ-4, CG-8 and CB-21.

Thus, it is obvious that any conversation that may have transpired almost an hour later between the clerk at Jonesboro and the clerk at Illmo was in connection with their duties and to expedite the work, and it is my understanding such use of the telephone is not in violation of the Telegraphers' Agreement."

In a letter dated June 21, 1965 the General Chairman wrote to the Superintendent that:

"While the facts contained in the second paragraph of your letter are essentially correct, the fact remains that you have omitted certain facts that materially change the whole situation. While the change report in question was filed with the telegrapher at Jonesboro and was transmitted by this telegrapher at 5:45 A.M., the fact remains the message was not received at Illmo by teletype due to faulty teletype communication between Jonesboro and Illmo. This is the reason the clerk at Illmo took it upon himself to call the clerk at Jonesboro and request the change report by telephone rather than ask the telegrapher at Illmo to secure it for him."

Employees contend that the Carrier never denied this on the property and that they may not do so for the first time in the Submission to the Board. While the ensuing correspondence between the parties does not show that the Carrier categorically affirmed or denied the allegations in the June 21, 1965 letter, the issue whether a clerk or a telegrapher transmitted the change report was met. In every step of the appeals procedure Carrier denied the claim on the facts stated in the Superintendent's letter of June 18, 1965. And that letter clearly states that the message was transmitted by a telegrapher.

The burden of proving that the change report was transmitted by a clerk and not by a telegrapher is upon the Employees. All of the allegations in Employees' letters are mere assertions and not evidence. It is admitted that a telegrapher at Jonesboro actually did transmit the message. If the telegrapher at Illmo did not receive it, testimony from the telegrapher there on duty should have been obtained. There is no statement in the record from any employees at either station which may be accepted as credible evidence to support Employees' position that the telegrapher at Illmo never received the message.

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;