

Award No. 14659

Docket No. TE-13117

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Railroad that the Carrier violated the Telegraphers' Agreement when it permitted or required employees other than covered by the Agreement to handle train orders in the absence of an emergency in the following instances; also that the Carrier shall be directed to compensate the designated employees covered by the Agreement as specified:

1. October 27, 1960 at 8:45 A. M., Train Order No. 83 copied by Conductor Foreman of Train 44 at Parker, Kansas. For such violation of Rule 1(a) and (d) of the Agreement, the agent-telegrapher at Centerville, Kansas to be allowed a day's pay.
2. November 1, 1960 at 5:34 A. M., Train Order No. 39 copied by Brakeman Foreman of Train 44 at Moran, Kansas. For such violation of Rule 1(a) and (d) of the Agreement, the agent-telegrapher at Iola, Kansas to be allowed a day's pay.
3. November 1, 1960 at 8:10 P. M., Train Order No. 158 copied by Conductor Smith of Train No. 6 at Moran, Kansas. For such violation of Rule 1(a) and (d) of the Agreement the agent-telegrapher at Iola, Kansas to be allowed a day's pay,
4. November 3, 1960 at 11:20 P. M., Train Order No. 160 copied by Brakeman Moehle of Train Extra 117-113 coupled north at Clinton, Missouri. For such violation of Rule 1(a) and (d) of the Agreement the agent-telegrapher at Clinton to be allowed a day's pay.
5. November 4, 1960 at 7:29 P. M., Train Order No. 154 copied by Conductor Krause of Train Extra 117-113 at Clinton, Missouri. For such violation of Rule 1(a) and (d) the agent-telegrapher at Clinton to be allowed a day's pay.

6. November 4, 1960 at 11:52 P. M., Train Order No. 192 copied by Conductor Springer of Train No. 42 at Kincaid, Kansas. For such violation of Rule 1(a) and (d) of the Agreement the agent-telegrapher at Kincaid to be allowed a day's pay.
7. November 10, 1960 at 11:48 P. M., Train Order No. 193 copied by Conductor Krause of Train Extra 117-91 coupled north at Clinton, Missouri. For such violation of Rule 1(a) and (d) of the Agreement the agent-telegrapher at Clinton to be allowed a day's pay.
8. November 11, 1960 at 1:01 A. M., Train Order No. 11 copied by Conductor Matney of Train Extra 157 South at Moran, Kansas. For such violation of Rule 1(a) and (d) of the Agreement the agent-telegrapher at Iola, Kansas to be allowed a day's pay.
9. November 11, 1960 at 1:04 A. M., Train Order No. 12 copied by Conductor Matney of Train Extra 157 South at Moran, Kansas. For such violation of Rule 1(a) and (d) of the Agreement the agent-telegrapher at Iola, Kansas to be allowed a day's pay.
10. November 12, 1960 at 8:58 P. M., Train Order No. 156 copied by Brakeman Temple of Train Extra 117-91 coupled at Clinton, Missouri. For such violation of Rule 1(a) and (d) of the Agreement the agent-telegrapher at Clinton to be allowed a day's pay.
11. November 13, 1960 at 12:18 P. M., Train Order No. 70 copied by Conductor of Train Extra 71-A South at Vance, Kansas. For such violation of Rule 1(a) and (d) of the Agreement the agent at Centerville, Kansas to be allowed a day's pay.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, which by this reference is hereby placed in evidence, provides:

"RULE 1. EMPLOYES INCLUDED

(a) These rules and working conditions will apply to Agents, Freight Agents, or Ticket Agents, Agent-Telegraphers, Agent-Telephoners, Relief Agents, Assistant Agents, where they have charge of station, take the place of or perform the work of an Agent, Telegrapher, Telephone Operators (except Switchboard Operators), Towermen, Levermen, Tower and Train Director, Block Operators, Staffmen, Operators of mechanical telegraph machines, used for receiving and transmitting messages, Manager Wire Chiefs, Wire Chief Telegraphers, and Car Distributors where the position requires knowledge of the duties of a telegrapher or the handling of messages by telephone (synonymous terms), all of whom are hereafter referred to as employees.

(d) Station or other employees at closed offices or non-telegraph offices shall not be required to handle train orders, block or report trains, receive or forward messages, by telegraph, telephone or

CARRIER'S STATEMENT OF FACTS: This claim involves eleven (11) specific alleged agreement violations account member of train crew copying train orders at Parker, Moran, Kincaid and Vance, Kansas, all located on the Kansas City subdivision extending from Parsons, Kansas to Kansas City, Missouri, and at Clinton, Missouri, located on the Eastern subdivision extending from Parsons, Kansas to St. Louis, Missouri.

No agent or telegrapher is employed at Parker, Moran and Vance, Kansas, and claims were made on behalf of the Agent-Telegrapher at Centerville for alleged violations at Parker and Vance, and on behalf of the Agent-Telegrapher at Iola for alleged violations at Moran. Parker is 8.4 rail miles north of Centerville and Vance is 5.3 miles south of Centerville. Iola is on the end of the Iola Branch extending from Moran to Iola, 13.2 rail miles from Moran. The Agent-Telegrapher at Centerville is assigned 6:45 P. M. to 3:45 A. M., with one hour for lunch, Monday through Friday, except holidays, and the Agent-Telegrapher at Iola is assigned 7:45 A. M. to 4:45 P. M., with one hour for lunch, Monday through Saturday.

The Agent-Telegrapher employed at Kincaid is assigned 7:45 A. M. to 4:45 P. M., with one hour for lunch, Monday through Friday, except holidays, and resides at Parker, 21.2 rail miles from Kincaid. The Agent-Telegrapher employed at Clinton is assigned 7:45 A. M. to 4:45 P. M., with one hour for lunch, Monday through Saturday.

The alleged violation of the Agreement at Vance involves use of radio by Conductor on caboose of train enroute from Kansas City to Parsons.

Attached hereto and made a part hereof is copy of correspondence exchanged by the parties in handling these claims on the property, Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: Claims Numbers 4, 5, 6, 7 and 10 relating to four occurrences at Clinton, Missouri and one incident at Kincaid, Kansas are squarely within our holding in Award 14656. Such claims are accordingly sustained for one call each, since Rule 1(e) and not Rule 1(d) applies.

The other alleged violations occurred at Parker, Moran and Vance, all in Kansas, and all being locations which Carrier contended on the property were "blind sidings" bringing them within the rule laid down by Special Board of Adjustment No. 226 in its Award No. 1. Organization, on the property, adduced no evidence relative to the history or characteristics of these locations to allow us to distinguish them from those involved in such award. If Parker, Moran and Vance are truly "blind sidings" the claims emanating from those locations cannot be sustained.

On the other hand, if they are abandoned stations where some work was previously done by the Telegraphers, we believe our decision here should be governed by our recent holding in Award No. 14287. In such award we said:

"It is therefore incumbent upon the Claimants to show by competent and convincing evidence in the record that by reason of system-wide past practice, custom, or tradition, there is reserved to employees under their Agreement schedule the exclusive right to handle train orders at stations which have been abolished."

Claimants not having met this test herein, the balance of the claims must be denied.

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 reflected in the Opinion.

AWARD

Claims Nos. 4, 5, 6, 7 and 10 are sustained for one call each; all others are denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of July 1966.

CARRIER MEMBERS' DISSENT TO AWARD 14659 **DOCKET..TE-13117 (Referee Brown)**

We concur with the Majority in the denial of all claims based on Rule 1(d), at points where no member of this craft is employed, and concur in the decision that Rule 1(e) (Standard Train Order Rule), not Rule 1(d) is applicable at stations where an agent-telegrapher is employed and not on duty but who is available or can be promptly located.

We dissent to the sustaining portion of the award at points where a member of this craft is employed for the reasons outlined in the dissent to Award 14656.

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