

Award No. 14661
Docket No. TE-13850

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:

1. The Carrier violated the Agreement between the parties in each instance set forth below when it permitted and/or required employees not covered by said Agreement to handle the following train orders (and one message) when no emergency existed:

CLAIM NO. 136: ITEMS 1 TO 6, INCLUSIVE

Station	Date	Order No.	Train No.	Time	Claimant
1. Moran, Kansas	8-30-61	124	6	7:28 PM	A. W. Redding
2. Parker, Kansas	8-30-61	150	42	10:50 PM	W. R. Ryman
3. Moran, Kansas	9-2-61	64&65	X91	9:22 AM	A. W. Redding
4. Parker, Kansas	9-21-61	136	42	7:48 PM	W. R. Ryman
5. Parker, Kansas	9-13-61	68	44	9:12 AM	W. R. Ryman
6. Angola, Kansas	9-20-61	135	50	7:58 PM	C. W. Meador

ITEMS 7 TO 17, INCLUSIVE

7. Canadian, Okla.	9-27-61	92	X153	3:22 PM	B. M. Price
8. Krowa, Okla.	10-5-61	39	52	3:52 AM	W. L. Reynolds
9. Clinton, Mo.	10-8-61	83	76	8:26 PM	C. J. Harris
10. Parker, Kansas	10-10-61	64	X159	9:14 AM	F. F. Sweet
11. Rayyard, Texas	10-3-61	123	52	9:40 PM	W. H. Hix
12. Kimball, Kansas	9-22-61	54	44	8:44 AM	R. G. Smothers
13. Moran, Kansas	9-27-61	63	X32	9:56 AM	A. W. Redding
14. Moran, Kansas	9-30-61	60	X154	10:40 AM	A. W. Redding
15. Moran, Kansas	10-1-61	51	44	9:14 AM	A. W. Redding
16. Moran, Kansas	10-6-61	86	X142	10:10 AM	A. W. Redding
17. Moran, Kansas	10-6-61	87	X142	10:12 AM	A. W. Redding

CLAIM NO. 137: ITEMS 1 TO 7, INCLUSIVE

Station	Date	Order No.	Train No.	Time	Claimant
1. Parker, Kansas	10-7-61	47	43	5:30 AM	W. R. Ryman
Parker, Kansas	10-7-61	48	43	5:32 AM	W. R. Ryman
2. Ringer, Kansas	10-9-61	56	43	7:12 AM	W. R. Ryman
Moran, Kansas	10-9-61	56	44	7:12 AM	A. W. Redding
3. Moran, Kansas	10-19-61	30	X32	3:10 AM	A. W. Redding
4. Moran, Kansas	10-19-61	121	X32	4:10 PM	A. W. Redding
5. Moran, Kansas	10-21-61	81	X98	10:50 AM	A. W. Redding
6. Parker, Kansas	10-10-61	64	X159	9:14 AM	W. R. Ryman
7. Moran, Kansas	10-21-61	73	X108	9:03 AM	A. W. Redding

CLAIM NO. 138

Chetopa, Kansas	11-4-61	17	X76C	1:29 AM	L. T. Beverly
-----------------	---------	----	------	---------	---------------

CLAIM NO. 142: ITEMS 1 TO 5, INCLUSIVE

1. Angola, Kansas	11-9-61	134	50	7:07 PM	C. W. Meador
2. Angola, Kansas	11-10-61	146	50	8:46 PM	C. W. Meador
3. Coffeyville, Kan.	11-22-61	99	50	5:43 PM	C. W. Meador
4. Coffeyville, Kan.	12-1-61	124	50	6:42 PM	C. W. Meador
5. Erie, Kansas	11-23-61	47	43	5:22 AM	R. G. Smothers

ITEMS 6 TO 9, INCLUSIVE

6. Parker, Kansas	12-14-61	75	44	8:41 AM	W. R. Ryman
7. Mildred, Kan.	12-17-61	18	43	2:40 AM	F. F. Sweet
8. Kimball, Kan.	12-22-61	66	44	9:20 AM	R. G. Smothers
9. N. Jefferson, Mo.	12-15-61	147	76	8:19 AM	J. A. Reed

ITEMS 10 TO 14, INCLUSIVE

10. Stark, Kansas	12-31-61	35	2	8:43 AM	R. G. Smothers
11. Coffeyville, Kan.	12-20-61	105	X96	4:51 PM	C. W. Meador
12. Okla. City, Okla.	12-21-61	Msg. to Parsons & Denisen		2:25 PM	S. A. Daigle
13. Coffeyville, Kan.	1-12-62	126	30	6:45 PM	C. W. Meador
14. Kincaid, Kansas	1-14-62	114	42	9:05 PM	F. F. Sweet

CLAIM NO. 144: ITEMS 1 TO 9, INCLUSIVE

Station	Date	Order No.	Train No.	Time	Claimant
1. McBaine, Mo.	2-6-62	20	52	1:18 AM	K. C. Redding
2. Calhoun, Mo.	2-6-62	8	X133-		
			130	12:37 AM	Q. W. Schier
3. Kimball, Kansas	2-3-62	61	44	8:59 AM	R. G. Smothers
4. Angola, Kansas	1-17-62	136	50	9:20 PM	C. W. Meador
5. Walker, Mo.	2-6-62	135	X72	7:04 PM	Paul Holly
6. Walker, Mo.	2-6-62	136	X72	7:12 PM	Paul Holly
7. Walker, Mo.	2-6-62	137	X72	7:16 PM	Paul Holly
8. Elsmore, Kansas	2-7-62	46	44	5:31 AM	R. G. Smothers
9. Moran, Kansas	2-8-62	128	X98	2:32 PM	A. W. Redding

CLAIM NO. 147: ITEMS 1 TO 8, INCLUSIVE

1. Moran, Kansas	2-17-62	80	X123	11:55 AM	A. W. Redding
2. Moran, Kansas	2-17-62	81	X123	11:59 AM	A. W. Redding
3. Moran, Kansas	2-22-62	82	X105	1:15 PM	A. W. Redding
4. Ladue, Missouri	2-9-62	165	X98-94	9:28 PM	C. J. Harris
5. Moran, Kansas	3-10-62	6	1	12:45 AM	A. W. Redding
6. Moran, Kansas	3-10-62	15	X96	1:14 AM	A. W. Redding
7. Moran, Kansas	3-10-62	16	X96	1:16 AM	A. W. Redding
8. Vance, Kansas	3-9-62	178	42	11:27 AM	W. R. Ryman

2. As a consequence of said violations the Carrier shall now be required to compensate each named claimant a day's pay at the minimum rate per day for telegraphers as set forth in the Agreement, for each instance that train orders (or messages) were so handled at each of the points specified.

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.

Claimant in Claim No. 142, Item 11, made claim for and was allowed a call as provided in Rule 1 (e), and the alleged claim for payment of one day under Rule 1 (d) is void and moot.

One (1) alleged violation, Claim No. 142, Item 12, Oklahoma City, Oklahoma, involved transmitting a diversion message by employes from Oklahoma City, Oklahoma to Parsons, Kansas, 2:25 P.M., December 21, 1961. Petitioner made claim for payment of one day at minimum rate per day for telegraphers under Rule 1 (d) which was allowed and this alleged claim is moot.

Attached hereto and made a part hereof is copy of correspondence exchanged by the parties in handling the eight (8) separate claims involved on the property, Carrier's Exhibit A, Parts 1 to 8, inclusive.

(Exhibits not reproduced.)

OPINION OF BOARD: Reference is made to Award 14659 for the basis of our decision herein.

Claims which might be paid under such decision but are denied for other reasons are as follows: Claim No. 142, Item 3 is denied because evidence shows an effort was made to locate Claimant without success on the occasion in question. Claim 142, Item 4 is denied because evidence shows Claimant was given, and declined, an opportunity to present a time claim for the violation. Item 13 is denied because the record shows Claimant Meador said he was not available for call.

Under Claim 142, Item 5 and Item 11 are sustained for a call. Item 12 is sustained for one day's pay. Carrier says these have been paid. If so, they need be paid only once.

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 Employes involved in this dispute are respectively Carrier and Employes 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 only to the extent reflected in our Opinion.

AWARD

Items 5 and 11 of Claim 142 are sustained for a call; Item 12 is sustained for one day's pay. All other claims 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 14661,
DOCKET TE-13850 (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 reasons outlined in the dissent to Award 14656.

**W. M. Roberts
G. L. Naylor
C. H. Manoogian
R. A. DeRossett
H. K. Hagerman**