

Award No. 15668
Docket No. TE-14778

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad (Gulf District), that:

1. The Carrier violated the Telegraphers' Agreement when it permitted or caused Signalmen W. E. Howard and J. H. Nall to send by telephone transmission, the following tie up messages on the dates indicated, when there were no Telegraphers on duty at Opelousas, Louisiana, between the hours of 3:30 P. M. and 11:30 P. M.

2. The Carrier shall compensate Telegrapher-Clerk R. C. Musgrove and Agent-Telegrapher S. A. Fontenot, as the case may be, a call of 2 hours' punitive time for each instance.

Time Slip No.	Dated	Date For	Claimant	Per Hour	Total
1 Claim	11-21-62	11-21-62	R. C. Musgrove	\$3.84-42	\$7.69
2 Claim	11-25-62	11-25-62	R. C. Musgrove	3.84-42...	7.69
3 Claim	11-26-62	11-26-62	R. C. Musgrove	3.84-42	7.69
1 Claim	12-20-62	11- 1-62	R. C. Musgrove	3.84-42...	7.69
2 Claim	12-20-62	11- 2-62	R. C. Musgrove	3.84-42	7.69
3 Claim	12-20-62	11- 5-62	R. C. Musgrove	3.84-42...	7.69
4 Claim	12-20-62	11-10-62	R. C. Musgrove	3.84-42	7.69
5 Claim	12-20-62	11-11-62	R. C. Musgrove	3.84-42...	7.69
6 Claim	12-20-62	11-13-62	R. C. Musgrove	3.84-42	7.69
7 Claim	12-20-62	11-19-62	R. C. Musgrove	3.84-42...	7.69
8 Claim	12-20-62	11-27-62	R. C. Musgrove	3.84-42	7.69

Nos. 1, 2 and 3 of November was sent to Mr. J. C. Bowden, but wasn't heard from nor paid for — result, copy message attached and no answer.

1 Claim	12-20-62	11- 5-62	S. A. Fontenot	\$4.19...	\$8.38
2 Claim	12-20-62	11- 6-62	S. A. Fontenot	4.19	8.38
3 Claim	12-20-62	11- 7-62	S. A. Fontenot	4.19...	8.38
4 Claim	12-20-62	11- 9-62	S. A. Fontenot	4.19	8.38
5 Claim	12-20-62	11-12-62	S. A. Fontenot	4.19...	8.38
6 Claim	12-20-62	11-14-62	S. A. Fontenot	4.19	8.38
7 Claim	12-20-62	11-18-62	S. A. Fontenot	4.19...	8.38
8 Claim	12-20-62	11-22-62	S. A. Fontenot	4.19	8.38

EMPLOYEES' STATEMENT OF FACTS: Claimant R. C. Musgrove and Agent-Telegrapher S. A. Fontenot are regularly assigned to positions of Telegrapher-Clerk and Agent-Telegrapher, respectively, at Opelousas, Louisiana. On the dates in question of the claim, there were no Telegraphers on duty at Opelousas between the hours of 3:30 P. M. and 11:30 P. M. The signalmen W. E. Howard and J. H. Nall sent transmissions which are generally called tie up reports between these hours on the dates in question. The following are the messages transmitted:

"Nov. 1, 1962, Opelousas, La.

JCM, JCB, AHG, Houston, AKM, JHN, DeQuincy

Opelousas tonight Waldorf Hotel Opelousas & Krotz Springs Friday.

J. H. Nall 8:02 P. M."

"Nov. 2, 1962, Opelousas, La.

JCB, JCM, JHG, Houston. AKM, JHN, DeQuincy

Opelousas tonight Waldorf Hotel Kinder and DeQuincy Saturday.

J. H. Nall 9:36 P. M."

"Nov. 2, 1962, Opelousas, La.

JCB, JCM, Houston. AKM, JHN, DeQuincy

Opelousas tonight Waldorf Hotel Opelousas Saturday.

W. E. Howard 9:36 P. M."

"Nov. 5, 1962, Opelousas, La.

JCM, JCB, JHG, Houston. AKM, JHN, DeQuincy

Opelousas tonight Paps Court Opelousas and New Iberia Thursday.

J. H. N. 8:35 P. M."

Dear Sir:

Reference to conference held April 25, 1963, at which time we discussed claim of Telegrapher R. C. Musgrove for a call on certain dates in November, 1962, and claims of Agent-Telegrapher S. A. Fontenot for a call on certain dates in November, 1962, account Signalmen W. E. Howard and J. H. Nall telephoned tie-up to telegrapher at DeQuincy, as covered in your File F-6-324.

You stated that the signalmen here involved should have written their tie-up and left it on the message hook for the telegrapher to transmit to the proper authorities after coming on duty at 11:30 P. M.

You were advised that it is the position of the Carrier that such information as tie-ups are not messages of record and, in any event, the information was given to a telegrapher at DeQuincy for transmission. As stated to you in conference, such information could be given by the signalmen direct.

In view of the foregoing, there is no justification for changing the decision given you in our letter dated April 16, 1963, declining the claim.

Yours truly,

/s/ B. W. Smith"

OPINION OF BOARD: On each date for which a claim is made in this docket, signalmen, who were tying-up and staying in Opelousas, Louisiana, for the night, telephoned the telegrapher at DeQuincy, Louisiana, and reported where they could be found in the event of an emergency. No telegrapher was on duty when each of the telephone calls was made. The Employees contend that these communications were of a type reserved to Telegraphers under the rules of their Agreement.

The Employees specifically rely upon Rule 2 of their Agreement, which provides, in paragraph (c), as follows:

"... nor will train and engine service employees be required or permitted to take train orders or to block, or report, trains by telephone or telegraph, except in emergency. . . ."

The Board finds that the communications in question were not equivalent to "train orders" or to "reporting" trains, as envisaged by Rule 2(c). Neither were the communications of the type this Board has traditionally recognized as falling within the exclusive function of employees covered by the Scope Rule of the Telegraphers' Agreement, for they cannot properly be said to have affected the operation of trains or the safety of persons and property. See Awards 5181 (Boyd), 5182 (Boyd), and 10525 (Carey).

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 not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of June 1967.