

Award No. 15736
Docket No. TE-14966

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 permitted and caused a violation of the Telegraphers' Agreement when, on December 26, 1962, Yardmaster Jorgenson at Anchorage, Louisiana Yard phoned the following message to IC telegrapher, North Baton Rouge, Louisiana:

"C&E No. 53-38

December 26, 1962

Stop at Anchorage and pick up deadhead for DeQuincy.

/s/ R. E. Smith, MoPac"

2. The Carrier shall compensate Telegrapher L. J. Bienvenue, senior idle telegrapher on this date, for eight hours at \$2.53 per hour, total amount \$20.24 for this violation.

EMPLOYEES' STATEMENT OF FACTS: Anchorage, Louisiana is located on the Anchorage Subdivision of the Missouri Pacific Railroad, Gulf District, 13.6 miles west of Baton Rouge, Louisiana. The Anchorage Subdivision extends from DeQuincy, Louisiana to New Orleans, Louisiana. There are two positions under our Agreement maintained at Anchorage, an agent-telegrapher with hours of 9:30 A. M. to 5:30 P. M., six days per week with Sunday as rest day, and a telegrapher-clerk position with hours of 8:30 P. M. to 4:30 A. M., Monday through Friday, with rest days of Saturday and Sunday. Prior to 1961 this was a continuous office at which time the third shift and swing positions were abolished.

Anchorage Yard Office is located 2.4 miles east of the Anchorage Station. There are no communication facilities maintained at this point except telephones which are both dispatcher and message phone lines.

advise No. 53 to stop at Anchorage and pick up an employe who was deadheading to DeQuincy. This could not be considered a message of record as you allege.

There is no support for your contention that the claim was not declined timely by the Superintendent or that no reason was given in his letter of declination dated April 4, 1963, in answer to District Chairman Musgrove's letter dated February 6, 1963.

In view of the foregoing, claim is without merit or rule support and is respectfully declined.

Yours truly,

/s/ B. W. Smith"

As your Board will note, the Carrier called the attention of the Employees to the fact that they did not have the facts in connection with this dispute. As pointed out to the Employees, Yardmaster Jorgenson telephoned the L&A Telegrapher at East Junction and not the IC Telegrapher at Baton Rouge as the Employees allege. In addition, the quotation set forth in the Employees' Statement of Claim is not a quotation of the telephone conversation that transpired between Yardmaster Jorgenson and the L&A Telegrapher.

7. Conference was held by the parties July 24, 1963, but the dispute was not composed and is at this time properly before your Board for a decision on the merits.

(Exhibits not reproduced.)

OPINION OF BOARD: A yardmaster at the Carrier's yard at Anchorage, Louisiana, telephoned the following message to a telegrapher on another Carrier's property:

"C&E No. 53-38

December 26, 1962

Stop at Anchorage and pick up deadhead for DeQuincy."

The Employees contend that the transmission of this message was of the type work reserved to them under their Agreement with the Carrier.

The Employees cite Rules 1 and 2 of the Agreement, which provide as follows:

"RULE 1. SCOPE

- (a) This agreement shall govern the employment and compensation of —
 - Agents — Freight and Ticket (as may be designated herein)
 - Assistant Agents — Freight and Ticket (as may be designated herein)
 - Agent Telegraphers
 - Agent Telephoners
 - Agent (small non-telegraph or non-telephone)

Managers of telegraph offices — Assistant Manager
Wire Chief
Manager — Wire Chief
Printer and Traffic Supervisors
Telegraphers, Telegrapher-Clerks
Telephone Operators (except telephone switchboard operators)
Block Operators
Tower and Train Directors
Towermen
Levermen
Car Distributors (as may be designated herein)
Operators of teletype or other mechanical telegraph transmission or reception appliances located in telegraph offices.

- (b) Positions covered by this agreement will be filled from the official seniority list, applicable to employees incorporated in this agreement, and the employees so assigned will be considered regularly employed. This section not to apply to Star Agencies as indicated under Rule 37 of this agreement, their assignments to be made in line with paragraph (b) of the rule mentioned.
- (c) The word 'employee,' as used in this agreement, shall apply to all classes coming within the scope of this agreement and the word 'station' refers to location at which employees perform service."

"RULE 2.

HANDLING TRAIN ORDERS, ETC.

- (a) Only in the event of accident or similar emergency will an employee other than covered by this agreement be permitted to receive train orders at telegraph or telephone offices where an operator is employed. If operator is available he will be paid for a call.
- (b) If instructed by train dispatcher, or other authority, to clear train or trains before going off duty, leaving clearance cards or orders in some specified place for those to whom addressed, employees shall be paid under the provisions of the call and overtime rule.
- (c) Train dispatchers will not be required nor permitted to transmit train orders or handle block by telephone or telegraph to train and engine service employees, except in emergency; 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. Emergency is defined as follows:

Casualty or accident, engine failure, wreck, obstructions on track through collision, failure to block signals, washouts, tornadoes, slides

or unusual delay due to hot box or break-in-two that could not have been anticipated by dispatcher when train was at previous telegraph office, which would result in serious delay to traffic.

(d) When orders and/or clearance cards are copied at one point and sent for delivery to a train at a point where telegraph or telephone service is maintained, the employee at such point will be paid for a call."

Rule 1, the Scope Rule, lists only the names of positions covered by the Agreement. It does not describe the type work covered by these positions. In such cases, the Board requires the Employees to establish, by resort to custom, tradition, and past practice, the type work reserved exclusively to the positions. In previous awards interpreting this Scope Rule on this property, this Board has found that, by custom, tradition and past practice, the type work reserved exclusively to the Employees embraces communications relating to the control of transportation, of which communications a record should be preserved. Award Nos. 5181 (Boyd), 5182 (Boyd) and No. 21, Special Board of Adjustment No. 506 (Ray).

Rule 2, entitled "Handling Train Orders, etc." and also cited by the Employees, contains specific prohibitions on persons other than the Employees doing certain types of work. Paragraph (a) of Rule 2 relates to the receipt of train orders by any persons other than "operators"; Paragraph (c) of Rule 2 relates to the transmissions or receipt of train orders, of handling block, and of reporting trains, all of this between train dispatchers and train and engine service employees.

Since the instant dispute involves a communication received by a foreign Carrier, Rule 2(a) could not apply. Since the transmitter of the communication was neither a dispatcher nor a train and engine service employee, Rule 2(c) could not apply. To prevail, the Employees must rely entirely upon Rule 1, as interpreted by this Board.

The question becomes, was this a communication relating to the control of transportation, and, if so, was it the type of which a record should be preserved? There are two requirements.

The communication meets the first requirement, for it did relate to the control of transportation. It related to the stopping of a specific train at a designated station for the purpose of receiving described matter. It was addressed to the persons who had command of the train.

Whether the communication meets the second requirement is not ascertainable by this Board. The Employees have advanced no proof that a record should be preserved of a message of this type. The Employees have the burden of establishing by proof or by acceptance of the Carrier, every element of their claim.

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 no violation of the Agreement has been proved.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1967.