



Award No. 15869
Docket No. TE-16239

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

MISSOURI PACIFIC RAILROAD COMPANY
(Gulf District)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Missouri Pacific Railroad (Gulf District), that:

1. Carrier violated The Telegraphers' Agreement when, on the 20th day of January, 1965, it required and permitted the yardmaster in Brownsville, Texas, to "OS" Extra 275 South into Brownsville Yard at 12:25 P. M. to train dispatcher in Houston, Texas.

2. Carrier shall compensate Telegrapher B. L. Garner for a 3 hour call at the hourly rate applicable at Brownsville Yard for the violation incurred on January 20, 1965.

3. Carrier shall additionally compensate Telegrapher Garner entitled to the above violation at the interest rate of six per cent per annum on all sums due and withheld as a result of this violation.

EMPLOYEES' STATEMENT OF FACTS: Brownsville, Texas, located on the Kingsville Division of the Missouri Pacific Railroad, has one assigned Telegrapher position with hours of 7:00 P. M. to 3:00 A. M. daily. R. I. Willingham is the regular assigned occupant of the position and is relieved on the rest days of the position, Tuesday and Wednesday, by B. L. Garner. Mr. Garner's other assignments in his work week are at Harlingen, Texas.

On Wednesday, January 20, 1965, the Yardmaster at Brownsville came on the Dispatcher's telephone and reported that Extra 275 South arrived in Brownsville Yard at 12:25 P. M. This occurred at a time when no Telegrapher was on duty prior to the assigned hours of the position and prior to the arrival of Telegrapher Garner. Claim was presented to the Carrier for the violation of Rule 2(c) of the Agreement. Claim was appealed to the highest officer, and declined by him. Claim is now properly before your Board for final adjudication.

9. On May 24, 1965, the Director of Labor Relations affirmed his decision of May 6, 1965. On September 9, 1965, the General Chairman advised that the claim was being "appealed" to their Bureau "for progression to the Third Division," but still offered no proof in support of the claim.

OPINION OF BOARD: The Employees' claim is based upon their assertion that on January 20, 1965 the yardmaster in Brownsville, Texas, telephoned the dispatcher and reported that Train Extra 275 South arrived in Brownsville Yard at 12:15 P.M. The Carrier's defense is that the dispatcher neither recalls nor has any record of talking with the Brownsville yardmaster on the day in question. No evidence was offered by either the Employees or the Carrier other than their exchanges of correspondence setting forth the Employees' version of the alleged incident and the Carrier's inability to ascertain if the incident even occurred.

This Board is not equipped to make findings of fact unless the parties either agree on the facts or present written evidence to support assertions of fact, which evidence can be weighed by the Board. Since no evidence was offered by either the Employees or the Carrier, the factual issues raised cannot be resolved and the claim must be dismissed.

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 established.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of October 1967.