

Award No. 16271
Docket No. TE-15645

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY
(Gulf District)

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

CLAIM NO. 1

1. Carrier violated the Agreement between the parties when on March 2, 1964, it required or permitted an employee not covered by said Agreement to receive Train Order No. 12 at Maypearl, Texas and deliver the same to C&E Eng. SRS 130 at Italy, Texas.

2. Carrier shall compensate the senior idle telegrapher (extra in preference) 8 hours at the pro rata prevailing telegrapher's rate of pay for this violation.

CLAIM NO. 2

1. Carrier violation of the Scope Rule 1 in allowing or requiring employees other than represented by this Organization to assume duties belonging to the craft.

2. Carrier shall compensate the extra employees idle February 10, 1964, and if none, will allow the Telegrapher at Taylor, Texas, who was idle on rest day, 8 hours' pay at \$2.5978, or \$20.78.

CLAIM NO. 3

1. Carrier violation of the Telegraphers' Agreement Scope Rule 1 in allowing and requiring train service personnel to affect delivery of train orders at a point where train order service is maintained but regular Telegrapher off duty.

(a) First 66 delivery of Order No. 279 to Work Extra 929 at Thorndale, Texas, February 22, 1964.

2. Carrier shall compensate the affected Telegraph Employees as follows:

- (a) Allow Agent-Telegrapher L. F. Carroll, one call, 3 hours, at \$2.6453, or \$7.94.
- (b) Allow Agent-Telegrapher O. M. Brockmann, one call, 3 hours, at his present rate of pay, monthly basis.

EMPLOYEES' STATEMENT OF FACTS: The three claims embodied in this dispute all arose at different locations, but involved the same basic issue where other than Telegraphers were required and permitted to deliver train orders, which is work that has been reserved to Telegraphers under their Agreement. In Claim No. 1 on March 1st, 1964, Division Trainmaster M. H. Cunningham issued the following message:

"Deadhead Condr and two brakemen to Italy in auto protect SRS 130 going to work 7 AM. York will pick up orders at Maypearl and bring them to Italy C-10-19."

The person referred to in the last sentence of the foregoing is Roadmaster S. G. York, Supervisory Official in the Maintenance of Way Department.

The orders referred to embraced Train Order No. 12, and read as follows:

"Train Order No. 12

March 2, 1964

C&E Eng SRS 130 at Italy Care Roadmaster York.

At Maypearl.

Eng SRS 130 works extra 701 AM until 801 PM between Penelope and TP Conn protects against second class trains not protecting against extra trains except protect against Extra 908 South after 701 AM.

Extra 908 South wait at Italy until 730 AM for Work Extra SRS 130. No. 141 wait at TP Conn until 801 AM for Work Extra SRS 130.

/s/ BCJ....Complete 612 AM."

In Claim No. 2, Dispatcher R. P. Bailey transmitted the following order to Taylor, Texas, for delivery to Extra 921 South at Thrall, Texas, a point approximately 6 miles north of Taylor:

"February 10, 1964

Order No. 268

To C&E 1st and 2nd 66 at Taylor

C&E Extra 921 South at Thrall care Carman.

1st and 2nd 66 wait at Taylor until 850 PM for Extra 921 South.

/s/ RPB....Complete 727 PM."

(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."

Your Board's attention is directed to the fact that there were no telegraphers assigned at the points where the train orders were to be executed in Claim No. 1 and Claim No. 2; therefore, paragraph (d) of Rule 2, which is that part of the rule providing for payment when train orders are addressed "in care of", has no applicability, and offers no support to the contention of the employees. Further, your attention is directed to paragraph (a) of the rule, particularly that part reading, "If operator is available . . .", because in neither of the cases presented in Claim No. 3 were the operators available; therefore, the rule offers no support for those claims.

OPINION OF BOARD: Claim No. 1 arose on March 2, 1964 when Train Order No. 12 from Division Trainmaster M. H. Cunningham to a work crew at Italy, Texas was directed to Roadmaster S. G. York for pick up at Maypearl, Texas and transmittal to the crew in question.

Claim No. 2 arose on February 10, 1964 when Dispatcher R. P. Bailey transmitted a message care of carmen at Taylor, Texas for delivery to Extra 921 South at Thrall, Texas, a point six miles away.

Claim No. 3 arose on February 22, 1964 when Dispatcher W. F. Bradley transmitted train orders for delivery from Taylor, Texas to Thorndale, Texas and Rockdale, Texas.

Claims No. 1 and No. 2 involved delivery of messages to locations where no telegraph or telephone service is maintained. Thus, the claims are similar to that raised in Award 16270 and are likewise denied.

Claim No. 3 involved Rockdale and Thorndale, Texas, both of which were points with stations, although the telegraphers concerned were off duty at the time of the messages' arrival.

It is clear from the record that Claim No. 3 comes within the purview of Rule 2 (d), concerning orders copied at one point and sent for delivery at another point where telegraph or telephone service is maintained. Under the terms of Rule 2 (d) the claimants are entitled to pay for a call in both instances.

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

The Agreement was not violated in regard to Claims 1 and 2.

The Agreement was violated in regard to Claim 3.

AWARD

Claims 1 and 2 denied.

Claim 3 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May 1968.