

Award Number 17348

Docket Number TE-16424

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
MISSOURI PACIFIC RAILROAD COMPANY**

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

CLAIM NO. 1

1. Carrier violated the Agreement between the parties when, on the 16th day of April, 1965, it began operation Southern Pacific trains on this property between Sinton, Texas and Corpus Christi, Texas, and requiring Train Dispatchers in Houston, Texas to transmit train orders and OSing clearance cards to the telegrapher at Skidmore, Texas, which is a Southern Pacific telegraph office. Said copying of train orders and delivering of orders and clearance cards belong to the telegraphers on the Missouri Pacific Railroad (Kingsville Division). In the instant case the Agent-Telegrapher at Sinton, Texas is being deprived of this work.
2. Carrier shall compensate Agent-Telegrapher at Sinton, Texas, one call, three hours pro rata pay for each clearance card and train orders copied and delivered to the Southern Pacific trains, for each day beginning April 16, 1965 and continuing thereafter until this work is returned to whom it belongs. Carrier's records shall be jointly checked by Carrier and the Organization to determine the extent of this violative action.
3. Carrier's records shall be jointly checked by Carrier and the Organization to determine the extent of this violative action and to whom each call is due.

CLAIM NO. 2

1. Carrier violated the Agreement between the parties when, on the 16th day of April 1965, it began operating Southern Pacific trains on this property between Corpus Christi, Texas and Sinton, Texas, and requiring Train Dispatchers in Houston, Texas to transmit train orders and OKing clearance cards to the telegraphers in the joint Southern Pacific-Texas Mexican Railway office at Corpus Christi, Texas for operations over the Missouri Pacific Railroad (Gulf District) tracks. Said copying of train orders and delivering of orders and clearance cards belongs to the telegraphers on the Missouri Pacific Railroad (Gulf District.)

In the instant case the telegraphers at Corpus Christi, Texas, are being deprived of work belonging to their Agreement.

2. Carrier shall compensate the telegrapher, nearest to point of violation at Corpus Christi, Texas, one call, three hours pro rata pay for each clearance card and train order copied and delivered by the Southern Pacific-Texas Mexican Railroad telegraphers to Southern Pacific trains for each day beginning sixty (60) days prior to date of this claim and continuing thereafter until this work is returned to the telegraphers on the Missouri Pacific Railroad (Gulf District), at Corpus Christi, Texas.
3. Carrier's records shall be jointly checked by Carrier and the Organization to determine the extent of this violative action and to whom each call is due.

Carrier shall pay ten percent interest per annum on all sums due and withheld as a result of this violation.

EMPLOYEES' STATEMENT OF FACTS: Beginning on April 16, 1965, the Southern Pacific trains began running over the Missouri Pacific Railroad tracks between Sinton, Texas and Corpus Christi, Texas on the Kingsville Division. The handling of train orders and clearances for the Southern Pacific trains operating on the Missouri Pacific tracks was assigned to agent-telegraphers and telegraphers at Skidmore, Texas, and the joint telegraphers of the Southern Pacific-Texas Mexican Railroad at Corpus Christi, neither of these groups of employees are under this Agreement. The Employees protested and filed claims for the violation of not permitting and requiring the agent-telegrapher under this Agreement at Sinton, Texas and the telegraphers at Corpus Christi, Texas under our Agreement to handle this work reserved under the Agreement. Claim 1, therefore, is in behalf of the agent-telegrapher at Sinton, Texas, for a call for the work performed at Sinton, Texas and Claim 2 is in behalf of the telegrapher nearest to the point of the violation at Corpus Christi for a call.

The claims were appealed to the highest officer and declined by him. The claims are not properly before your Board for final adjudication.

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS:

1. This dispute involves the application of an Agreement between the Missouri Pacific Railroad Company and the Employees thereof represented by Transportation-Communication Employees Union, effective March 1, 1952, which Agreement is on file with your Board and by reference made a part of Carrier's Submission.

2. The Missouri Pacific Railroad Company (hereinafter referred to as Carrier) operates a line of road from Houston to Brownsville and from San Antonio to Corpus Christi, Texas known as the Kingsville Division. Odem, Texas is the junction point where the San Antonio to Corpus Christi and Houston to Brownsville line crosses. The Southern Pacific Railroad Company (hereinafter referred to as the SP), prior to April 16, 1965, operated over a line of road extending from San Antonio to Rockport, Texas, thence along the Corpus Christi Beach across Nueces Bay via a long trestle bridge to the SP yards in Corpus Christi. The MP's line from Houston to

operate over MP rails. You recognize the fact, as indicated in your letter, that the telegraphers in the joint SP-Tex.Mex telegraph office are not parties to the agreement between the MoPac and your Organization and that telegraphers employed by the MoPac have no right to receive, copy and deliver train orders in the joint SP-Tex.Mex telegraph office at Corpus Christi.

The Carrier, of course, has the inherent right to determine the point at which train orders are received, copied and delivered. The fact that orders received, copied and delivered by a joint SP-Tex.Mex. telegrapher at Corpus Christi to SP crews who execute them as required does not give telegraphers employed by the MoPac rights to such work on the SP-Tex.Mex. property regardless of the fact that such orders may be executed on tracks of the MoPac over which the SP has a right to operate. This fact has been universally accepted because train orders are seldom, if ever, executed at the point where they are delivered to the train crews to whom directed.

In view of the foregoing, we find no valid claims have been presented for the reasons stated in the second paragraph of this letter; furthermore, a review of the Agreement between this carrier and your Organization reveals no provision which prohibits the manner in which train orders are received, copied and delivered to SP trains at Corpus Christi, and this is to advise you that these claims are respectfully declined.

Yours truly,

/s/ A. K. McKeithan"

(Exhibits not reproduced)

OPINION OF BOARD: This Carrier entered into an agreement with the Southern Pacific, subsequently approved by the Interstate Commerce Commission, whereby the Southern Pacific was granted trackage rights over the Missouri Pacific line from Sinton, Texas to Corpus Christi, Texas. On April 16, 1965, the Southern Pacific began using the Carrier's track, whereupon the instant claims were filed by the Organization alleging a violation of the Agreement.

The Carrier denied the claims on the ground that neither the Scope Rule nor the Train Order Rule was violated. Insofar as the Scope Rule is concerned, the Carrier documents its argument both on an established practice on this property as well as system wide. As to the Train Order Rule, the Carrier contends that its application is limited to receiving train orders at telegraph or telephone offices where an operator is employed.

Thus, it is argued by the Carrier that the Rules were not violated "when an SP train crew received a train order from an SP telegrapher at a point on the SP lines for execution by the SP train crew without regard to the point where the train order is to be fulfilled."

In our view, Award No. 13924, as well as the practice, supports the Carrier's position. We, therefore, find it unnecessary to discuss the question of joint check of records or of payment of interest.

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.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1969.