

Award Number 17568

Docket Number TE-16425

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:

1. Carrier violated the Agreement between the parties when, on the 34th day of April, 1965, it began operating Missouri-Kansas-Texas Railroad trains over the Missouri Pacific Railroad tracks between Taylor, Texas and MKT Jct., San Marcos, Texas, and unilaterally diverted the handling of train orders and clearances from telegraphers at MKT Jct. to MKT Agent-Telegrapher at San Marcos, Texas, thereby depriving the telegrapher at MKT Jct. of work that belongs to that position.
2. Carrier shall compensate the telegrapher at MKT Jct., San Marcos, Texas, one call, three hours pro rate pay for each train order and clearance copied and delivered to MKT trains by the MKT Agent-Telegrapher at San Marcos, Texas, beginning April 4, 1965 and continuing thereafter as long as this violative action is permitted.
3. Carrier shall pay six percent (6%) interest per annum on all sums due and withheld as a result of each violative action.

EMPLOYEES' STATEMENT OF FACTS: On April 3, 1965, Superintendent G. T. Graham, stationed in Palestine, Texas, issued written instructions to the effect that on April 4, 1965, Missouri-Kansas-Texas trains would operate over the Missouri Pacific tracks from Taylor, Texas to MKT Jct., San Marcos, Texas and that the dispatchers in Palestine, Texas would clear these trains through the agent-telegrapher on the MKT at San Marcos, Texas, governing the northbound movement. The southbound trains were instructed to receive clearances and orders from the Missouri Pacific telegraphers at Taylor, Texas.

The junction point where the MKT trains enter and leave the Missouri Pacific tracks at San Marcos, Texas, is situated approximately one mile north of the Missouri Pacific station and approximately two miles from the MKT station. From the time the tower on the Missouri Pacific was constructed at the point of entrance, known as MKT Jct., the tower was manned by Missouri Pacific telegraphers. The tower began operation August 1, 1912, and telegraphers under the Agreement have continuously manned the tower since that time.

MKT train are given to the MKT crew by the MKT Agent-Telegrapher while the train is on MKT tracks at San Marcos in the same manner as they did in June, 1962, when you initiated your original claim. Rules of the Telegraphers' Agreement have not been violated as result of the MKT Agent-Telegrapher handling train orders for the MKT trains that enter our tracks at San Marcos.

In view of the foregoing, claim is invalid; in any event, claim is without merit or rule support and is hereby declined.

Yours truly,

/s/ B. W. Smith"

10. The General Chairman refused to recognize that the instant dispute is barred from consideration by your Board taking the position that a so-called continuing claim may be initiated by the Organization at any time so long as the monetary portion of the claim is not made retroactive for a period of more than 60 days prior to the date of the letter initiating the claim.

(Exhibits Not Reproduced)

OPINION OF BOARD: The Organization filed the instant claim on May 9, 1965, alleging a violation by the Carrier in "diverting the handling of train orders and clearances from telegraphers at MKT Jct. to MKT Agent-Telegrapher at San Marcos." The Carrier declined the claim on two grounds—procedural as well as merits.

That basis for the Carrier's declination on the procedural aspect is predicated on the fact that:

"An identical claim was initiated by you on July 7, 1962, predicated on the MKT Agent-Telegrapher copying train orders for MKT trains entering MP tracks at San Marcos to operate to Austin, Texas. You handled the claim through all channels on the property, including the highest officer designated to render decisions on time claims, where final decision was rendered declining the original claim on November 9, 1962. See your file F-6-268. The original claim "was also filed as a continuing claim; however, after receiving the decision of the Director of Labor Relations declining the claim, you abandoned the claim as you did not progress it to the Third Division, National Railroad Adjustment Board."

Since the Carrier raised the issue on the property, it is incumbent upon us to determine whether the instant claim is identical with the one which originated in 1962. Our analysis indicates that although it is not identical, in our view it cannot be entertained.

That 1962 claim arose out of the abolishment of certain positions at MKT Junction on June 22, 1962. Further, communication work was transferred to the Agent-Telegrapher on the MKT, located at San Marcos.

The Carrier, additionally, contended on July 29, 1965, as follows:

"For many years the MKT and MP have had a joint trackage agreement for the MKT to operate over MP tracks between San

Marcos and Austin, Texas; recently the trackage rights of the MKT were extended to Taylor, Texas. The extension did not change any practice that was in effect at San Marcos for handling train orders for the MKT trains entering the MP tracks at San Marcos. The train orders for the MKT train are given to the MKT crew by the MKT Agent-Telegrapher while the train is on MKT tracks at San Marcos in the same manner as they did in June, 1962, when you initiated your original claim."

The General Chairman failed to refute this statement. Consequently, Article V, Section 1 (c) of the August 21, 1954 Agreement, hereinafter quoted, is applicable:

"All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. . . ."

In the instant situation, the Organization neither instituted proceedings within 9 months on the 1962 claim nor was there an extension of time. Under the circumstances evidenced herein, Award 12851 is controlling. The instant claim is analogous in that respect to the extent that the 1962 claim included handling of train orders by the MKT Agent-Telegrapher at San Marcos. Also see Awards 10453, 14829, 15327 and 16265.

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 claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.

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