



Award Number 17629

Docket Number TE-116073

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, 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 15th day of October, 1964, it unilaterally removed the copying and delivering of clearance cards and train orders to trains No. 51 and 53 from the agent-telegrapher and telegrapher-clerks at Anchorage, Louisiana and transferred said work to L&A Railroad telegraphers at Bridge Tower, Baton Rouge, Louisiana.
2. Carrier shall compensate agent-telegrapher C. B. Bergeron, or his successors, one call, three hours pro rata pay for each clearance card and train orders copied and delivered to train No. 53 for each day beginning October 15, 1964, and continuing thereafter until this work is returned to whom it belongs.
3. Also, Carrier shall compensate the telegrapher-clerk at Anchorage, Louisiana, one call, three hours at the pro rata pay for each clearance card and train orders copied and delivered to train No. 51 on each day beginning October 15, 1964, and continuing thereafter until this work is returned to whom it belongs.
4. Carrier shall pay six percent per annum on all sums due and withheld as a result of this violation.

EMPLOYEES STATEMENT OF FACTS: Anchorage, Louisiana is located on the DeQuincy Division of the Missouri Pacific Railroad (Gulf District) on the west side of the Mississippi River, 9.2 miles from Baton Rouge, Louisiana. Anchorage Yard Office is located 2.4 miles west of the Anchorage Passenger Station. Prior to May 13, 1964, the agent-telegrapher and the other telegrapher-clerk were stationed at Anchorage Passenger Station and performed their duties of handling train orders, clearances and reporting trains and other work relative to the positions. The agent-telegrapher's hours were 9:30 a.m. to 5:30 p.m., six days per week, with the position being filled on Sunday by an extra telegrapher, if available, otherwise by the agent-telegrapher. The telegrapher-clerk position has hours of 8:30 a.m. to 4:30 p.m., seven days per week.

On or about May 13, 1964 the Carrier removed the agent-telegrapher and the telegrapher-clerk from the Passenger Station and instructed them

the Gulf District. The right of DeQuincy Division telegraphers to copy train orders, and/or clearances is limited to those issued on the DeQuincy Division at points where telegraphers are employed. Train orders may be issued to the train crew at the initial terminal covering the entire trip without regard to the point where the train order is to be executed.

In view of the foregoing, claims are without merit or rule support and are hereby declined.

Yours truly,

/s/ B. W. SMITH"

9. In the handling of this dispute on the property, the Carrier repeatedly reminded the Organization representative that orders may be given to a train at its originating terminal covering the entire trip if practicable. Examples being trains originating at Houston receive orders from Houston Belt & Terminal Railroad telegraphers for execution on MP tracks; trains originating at Ft. Worth for movement to Houston receive orders from Texas & Pacific Railroad telegraphers for execution on MP tracks. This is only two examples.

10. Since the instant claim was initiated, Train No. 51 covered in Item 3 of the Employees' Statement of Claim was discontinued, effective March 10, 1965.

(Exhibits not reproduced)

OPINION OF BOARD: This dispute relates to the work of copying and delivering of clearance cards and train orders to trains 51 and 53. Carrier took the work from members of the Organization employed at Anchorage, Louisiana, and placed it with telegraphers at Bridge Tower, Baton Rouge, Louisiana. These latter-mentioned employees were nominally employed by the Louisville and Arkansas Railroad, but under a joint agreement between the Missouri Pacific and the Louisville and Arkansas, the two carriers shared the cost of labor (including telegraphers) and materials incident to their joint usage of the track between East Junction and West Junction, Louisiana.

The transfer of work herein was not a purely arbitrary move. A CTA was installed and such action eliminated the necessity for the operation by telegraphers of wye power switches located at Anchorage. Thereupon the telegraphers were moved from the passenger station to the yard office. Handling the train orders for trains 51 and 53 from the yard office proved impractical since the Employees were required to take the orders from the yard office to the passenger station, a distance of 2.4 miles. After the move complained of, no member of the Organization suffered any loss of employment.

There are awards of this Division which would support a sustaining award herein. We have carefully considered them, as well as awards to the contrary. We believe the latter, typified by Award 13635 (Englestein) are better supported by reason.

We adopt the following language from Award 13635 as applicable here:

"The Agreement does not prohibit or restrict Carrier from transferring the work of copying train orders from one location

to another. * * * To be sure these employees are on the Pittsburgh and West Virginia Railway payroll, but they also are in the joint employ of the Carrier involved in the instant dispute. When they handle train orders for this Carrier, they are in Carrier's employ and are not considered 'other employees' to which Rule 26 refers. As telegraphers of this Carrier who traditionally performed the handling of train orders they were properly assigned the work formerly handled at Adena."

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

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December 1969.

DISSENT TO AWARD 17629, DOCKET TE-16073

The majority correctly observed that "There are awards of this Division which would support a sustaining award herein." But then, instead of rendering such a supportable award, the majority chose to rely upon an award which is clearly distinguishable from the present case, and thereby committed error.

Neither the rule nor historical practice dealt with in Award 13635 is in any decisive way comparable to the rule and practices involved in the present case.

Such careless disregard for distinguishing facts is inexcusable in a forum of last resort. The award is palpably erroneous, and I dissent.

C. E. KIEF
Labor Member