



Award Number 17700

Docket Number TE-16324

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James R. Jones, 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 Telegraphers' Agreement when, at 6:50 A.M., January 26, 1965, it required and permitted Trainmaster H. E. Handley, Jr., Harlingen, Texas, to transmit communication direct to clerical employe H. G. Smith at Bay City, Texas, over telephone at a time the Agent-Telegrapher at Bay City, Texas, was off duty. Trainmaster Handley, Jr. used telephone in his office at Harlingen to commit this violative act. Both employes are outside the coverage of The Telegraphers' Agreement.
2. Carrier shall compensate the senior idle telegrapher (extra or on rest day) 8 hours pro rata prevailing rate for violation committed by Trainmaster Handley at Harlingen; Also, shall compensate Agent-Telegrapher at Bay City, Texas, One Call, three hours pro rata rate for the violation at Bay City, Texas.
3. Carrier shall pay interest at the rate of six percent per annum on all sums due and withheld due to the violative acts mentioned above.

EMPLOYEES' STATEMENT OF FACTS: Harlingen, Texas, is located on the Kingsville Division of the Missouri Pacific Railroad. There are two positions under the Agreement at the Yard Office, with assigned hours of 2:00 A.M. to 10:00 A.M. and 4:00 P.M. to 12:00 Midnight, seven days per week. The Trainmaster's Office is located 1.1 miles from the Yard Office, in the Freight Station.

On January 26, 1965, at 6:50 A.M., instead of permitting and allowing the Telegrapher on duty at the Yard Office to perform the work of his position, Trainmaster Handley used the message phone in his office and contacted the clerical employee at Bay City, Texas, and transmitted the morning report of trains to the Clerk for delivery to Superintendent A. K. McKeithan, who at that time was tied up at Bay City.

Bay City, Texas, is located on the same Division of the same Railroad, 86 miles southwest of Houston. There is one position under the Agreement at this point and it is classified as Agent-Telegrapher, with assigned hours of 8:00 A.M. to 5:00 P.M., six days per week. There is one clerical position not under the Agreement with assigned hours of 11:00 P.M. to 7:00 A.M.

not "control transportation." The letter of declination is quoted below for the ready convenience of your Board:

"June 3, 1965

K 279-611

Mr. R. T. Phillips
General Chairman—TCU
P. O. Box 456
Palestine, Texas 75801

Dear Sir:

Reference to your letter dated April 10, 1965, file F-6-577, appealing from the decision of General Manager D. J. Smith claim on behalf of 'senior idle telegrapher (extra or on rest day)' for eight hours at the pro rata rate on January 26, 1965 when it is alleged that Trainmaster H. E. Handley, Harlingen, Texas, transmitted a communication to a clerical employe at Bay City, Texas, over the telephone.

District Chairman Vezorak fabricated a message which he alleged was transmitted by Trainmaster Handley to a clerk at Bay City.

The information that Trainmaster Handley telephoned the clerk at Bay City concerned the switcher at Harlingen and was for the personal use of Superintendent McKeithan. The information is ordinarily furnished the superintendent orally and does not in any manner 'control transportation.'

The only comment District Chairman Vezorak has to make in reply to Superintendent McKeithan's letter of March 23, 1965 was, 'Next to last paragraph of your letter is not worthy of comment . . .'. Evidently the District Chairman was unable to express a valid reason for not accepting the Superintendent's explanation.

In view of the foregoing, claim is without merit or rule and is hereby declined.

Yours truly,

/s/ B. W. SMITH"

6. Conference was held and the General Chairman made available for inspection the so-called "morning report" which he contended the Trainmaster had telephoned the clerk at Bay City. He was advised during conference that the Trainmaster did not telephone the "morning report" as he alleged, and the General Chairman was again advised that information concerning the condition of the railroad is regularly telephoned the Superintendent by subordinate officials of the Carrier.

The General Chairman disputed Carrier's statements that Trainmasters and other Carrier officials regularly telephoned information to the Superintendent regarding the performance of yard engines and trains in their territory; however, the General Chairman offered nothing to support his contention that such a practice was contrary to any rule of the Telegraphers' Agreement.

OPINION OF BOARD: Petitioner claims that Carrier violated Rule 1, the Scope Rule, of the Agreement when it permitted Carrier's trainmaster

to transmit a morning report by telephone on January 26, 1965. Petitioner contends that such transmission of morning reports has been, by tradition, the exclusive work of telegraphers.

It is axiomatic that the burden of proof is on the Claimant. In this case, the Claimant must first establish by the preponderance of evidence that Carrier's official did, in fact, transmit the morning report on the day in question. Second, Claimant must prove that by custom and tradition, such transmissions are the exclusive work of telegraphers in order to establish a violation of Rule 1.

Claimant contends that the morning report as contained in Exhibit 1 was transmitted by Trainmaster Handley to a clerk thereby depriving work for a Telegrapher. Carrier denies that the morning report contained in Exhibit 1 was indeed transmitted by Trainmaster Handley. Carrier contends that the transmission from Trainmaster Handley to the clerical employee at Bay City was merely information on a switcher for the personal use of Carrier's Superintendent McKeithan.

Claimant must prove all elements in its claim which are not accepted by the Carrier. In this case, there is conflict on the basic question of whether or not Carrier's officer did actually transmit the morning report. Claimant must introduce more probative evidence to establish this first element of his case.

Having failed to prove that Trainmaster Handley did, in fact, transmit the morning report, there is no need for this Board to rule on the other questions raised in this case.

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

Claimant has failed to establish its burden of proof that Carrier's Trainmaster Handley transmitted the morning report.

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 January 1970.