

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Arthur W. Devine, Referee

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**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION DIVISION, BRAC  
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Division, BRAC on the Missouri-Kansas-Texas Railroad Company, T-C 5752, that:

1. Carrier violated the provisions of the Telegraphers' Agreement when, on June 14, 1969, at 7:45 A.M., it caused, allowed, and permitted an employee not covered by the Agreement to transmit by telephone from Muskogee Yard to the telegrapher at Ray Yard, Denison, Texas, train consist of train No. 3 at a time when the office was closed, claimant off duty, idle, and available at the time of the violation but not used.

2. Carrier shall not compensate Claimant A. W. Riley, senior telegrapher, leverman, South Tower, Muskogee, in the amount of a minimum day, \$25.44, for the violation of the Telegraphers' Agreement as set forth in Rule 1(d), in addition to his regular rate.

**EMPLOYEES' STATEMENT OF FACTS:**

**(a) Statement of the Case**

The dispute herein is predicated on various provisions of the collective bargaining agreement entered into by the parties effective September 1, 1949. Claim was submitted to the proper officers of the Carrier, at the time and in the usual manner of handling, as required by agreement rules and applicable provisions of law. The claim was discussed in conference between representatives of the parties on November 14, 1969.

The controversy arose on Saturday, June 14, 1969, when a clerical employee in the Carrier's Muskogee, Oklahoma, yard office used the telephone to transmit the consist of train No. 3 to a telegrapher at Denison, Texas.

Employees contended in the handling on the property, and now contend before the Board, that certain provisions of the collective bargaining agreement were violated. (These provisions are set out in Section (d) hereof, Rules Relied On.) Carrier contended (1) that 'Muskogee Yard or Terminal has never been a "closed office" within the intent and meaning of Rule 1 (d) of the

The claim was declined by Agent-Trainmaster E. V. Olzawski on June 25, 1969; appealed to Superintendent T. G. Todd on June 30, 1969; was declined by Superintendent Todd on July 10, 1969; was appealed to the Manager of Personnel on July 15, 1969; declined by the undersigned on August 25, 1969; discussed and declined in conference with the undersigned on November 14, 1969.

Attached hereto and made a part hereof, is copy of all correspondence exchanged by the parties in handling this matter as Carrier's Exhibit "A."

Attached hereto and made a part hereof, is copy of Special Board of Adjustment Awards and other exhibits referred to herein as Carrier's Exhibits "B" and "C."

(Exhibits not reproduced.)

**OPINION OF BOARD:** The record in the dispute is voluminous, with each side presenting extensive arguments and citing numerous decisions which it contends supports its position.

The dispute arose as a result of a clerk in the yard office at Muskogee, Oklahoma, transmitting by telephone a consist to the telegrapher at Ray Yard, Denison, Texas. Continuous telegraph service is maintained at North and South towers, Muskogee. North tower is located about one mile north of the yard office and South tower is located about one mile south of the yard office, all within the same terminal. The Claimant was regularly assigned to the first shift at South tower. Saturday, June 14, 1969, the date of the occurrence was one of Claimant's regularly assigned work days, and the alleged violation occurred about fifteen minutes prior to the start of his work day.

A telegraph office was formerly maintained at the yard office, but was discontinued some years prior to the occurrence giving rise to the claim herein. It appears that at the time of the claim and prior thereto telegraphers from North or South tower were sent to the yard office to perform the work necessary to transmit communications from Muskogee Yard to other points. Even though the actual transmission was by I.B.M. equipment, telegraphers were used to activate the equipment. However, on the date involved herein the telegrapher from South tower did not go to the yard office because of trouble having developed on the I.B.M. equipment. The clerk then transmitted the consist by telephone to the operator at Ray Yard, Denison, Texas, which resulted in the claim.

From our study of the record we are convinced that the transmission of consists at Muskogee yard office is considered to be telegrapher's work, the parties being in agreement that ordinarily telegraphers are sent from North or South towers to perform the communication work.

Rule 1(d) of the agreement specifically prohibits employees other than telegraphers from handling messages by telephone at "closed offices or non-telegraph offices." With telegraphers assigned the work of handling messages at the yard office, we must agree with argument on behalf of the Petitioner that the yard office is "an office which is kept open a part of the day or night" as referred to in the "Note" under Rule 1(d). We find, therefore, that the agreement was violated and the claim will be sustained.

This Award is based solely upon the facts as they existed in this particular case and is not to be construed as attempting to define a "closed office" under any other set of facts or circumstances.

**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 Employes involved in this dispute are respectively Carrier and Employes 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 violated.

#### **AWARD**

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of THIRD DIVISION

**ATTEST:** E. A. Killeen  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of September 1971.