Award No. 18
Docket No. 18

MOP File 380-1628
ORT File 1222

SPECIAL BOARD OF ADJUSTMENT NO. 117

ORDER OF RAILROAD TELEGRAPHERS
and
MISSOURI PACIFIC RAILROAD COMPANY

Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad that:

1. Carrier violated Rule 1 and Rule 2 of the Telegraphers' Agreement when it permitted or required Engineer Riley to copy train order No. 294 on July 2, 1955, at Hensley, Arkansas, formerly an open telegraph station.

2. Carrier shall be required to compensate D. L. Lovelady, the senior idle available extra Telegrapher, for 8 hours at the pro rata rate of pay for the reopened position at Hensley, Arkansas, for July 2, 1955.

OPINION OF BOARD: The petitioners here assert that Rules 1, 2, 14(f) and 21 of the effective agreement were violated when an employe of the respondent, not covered by the effective agreement, was required to copy and deliver a train order. It is asserted that the handling of train orders belongs exclusively to those covered by the effective agreement and that while there were no employes at the station here in question, the Carrier should have called the claimant, who was the senior idle available extra telegrapher on the date in question.

The petitioners rely on Awards 5992, 6276, 6639 and 6809 of the Third Division of the National Railroad Adjustment Board each of which it is asserted sustain the contention that the handling of train orders is work belonging exclusively to those covered by the Telegraphers' Agreement and that handling of such orders by any employe not so covered is in contravention thereof.

The respondent here counters with the position that the handling of train orders is not work coming exclusively within the purview of the Scope Rule of the Telegraphers' Agreement, in that said rule covers positions, and not work. It was pointed out that in the instant case there were no telegraphers assigned to the station in question and that, under the provisions of the effective agreement, there can be no penalty imposed under said agreement if no employe is assigned.

While several rules of the effective agreement are cited, the merit or lack thereof, of the instant claim must depend upon an application and interpretation of Rule 1(b) of the effective agreement, said rule reading as follows:

> "No other employe except train dispatcher, and those covered by this agreement, will be permitted to handle train orders, except that in an emergency the conductor may copy a train order from the train dispatcher and if there be a telegrapher employed at the point where the conductor copied the order, he (the telegrapher) will be paid a call (three hours at the pro rata hourly rate)."

The respondent points out that it has never been the custom or practice on the property to assign train order work exclusively to those covered by the Telegraphers' Agreement, and in this connection pointed out that Rule 1(b) provides for a penalty only in those cases where a telegrapher is employed at the point where the train order is handled; and that in those instances, the penalty provided is payment for a call (three hours at the pro rata hourly rate). The respondent cites that during negotiations in 1941 the Organization here proposed an amendment to Rule 1(b), said amendment reading as follows:

> "(b) No other employee except train dispatcher, and those covered by this schedule will be permitted to handle train orders, except that in an emergency the conductor may call the dispatcher and the employee whose tour of duty is nearest to time and place such call was made will be notified and paid for the call."

and that a casual comparison of the existing rule with the proposal submitted by the Organization clearly shows that it was neither the letter nor the intent of the rule as it is presently constituted to provide for penalty payment for the handling of train orders at stations where no telegraphers were employed.

The respondent asserts that Awards 4259 and 6487 of the Third Division of the National Railroad Adjustment Board are controlling here.

The claims with which we are here concerned contain a factual situation which is comparable to, if not identical with, that with which the Third Division, National Railroad Adjustment Board, was concerned in Award 4259. The petitioners here assert that the effect of this award was nullified by Award No. 6 of Special Board of Adjustment No. 100 and that by reason of the vacation and nullification of Award 4259 that the ennunciation of the principle that the handling of train order work by a conductor, even though it is at a place or station where no telegraphers are employed, is a violation of the effective agreement and a principle which should be here adopted.

Rule 1(b) reserves to those covered by this agreement (train dispatchers excepted) the handling of train orders (except in emergency) during which time conductor may copy train orders from train dispatchers with the proviso, however, that if a telegrapher is employed at the point where the conductor handled the order, he (the telegrapher) will be paid a call for three hours at the pro rata rate.

It is evident from the facts of record here that the petitioners have unsuccessfully sought in the past to amend Rule 1(b) to provide for payment to an employe whose tour of duty is nearest to the time and place where train orders are handled by (conductors) not covered by the effective agreement; thus, it is evident that they, the petitioners, have not considered that the Scope Rule covered situations and places where orders were handled at stations where no employe covered by the effective agreement was employed.

We are here further confronted with the question of whether or not Award 4259, which admittedly has comparable, if not identical, factual situation should be here considered as void in light of Award No. 6 of Special Board of Adjustment No. 100. We are of the opinion that Award No. 4259 should not be so nullified and that on the basis of the record here, the service in question, which was performed by the

conductor, was not in contravention of the confronting agreement and, as stated in said award, should be regarded as "permissively incidental, rather than as an unwarranted invasion of the telegraphers' field".

FINDINGS: The Special Board of Adjustment No. 117, upon the whole record and all the evidence, finds and holds:

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 Special Board of Adjustment has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the effective agreement.

AWARD

Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 117

Livingston Smith - Chairman

C. O. Griffith - Employe Member

G. W. Johnson - Carrier Member

St. Louis, Missouri
July 10, 1956