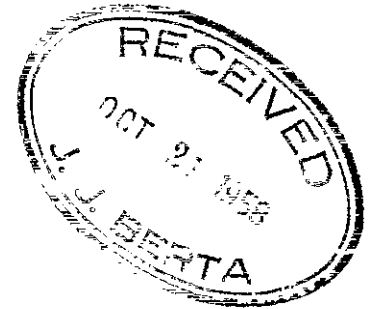


Under the
RAILWAY LABOR ACT
Special Board of Adjustment No. 226

Hearings April 9-30, 1958

Dallas, Texas

Award No. 23



PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF CLAIM:

ORT Claim MSC 4-22 the Carrier violated the Agreement when it refused to grant telegraphers R. C. Cathey, C. R. James, L. M. Dayton, J. W. Fewell and C. D. Smith a fair and impartial hearing, as required by Rule 8 (b) of the Telegraphers' Agreement, when same was properly requested under the rule.

FINDINGS AND OPINION:

On July 8, 1957 the Superintendent at Waco instructed the Superintendent of Terminal at Houston to

".....take off seven clerical positions and one porter at passenger station, notify operators effective July 11th they will work mail and baggage for passenger train....."

Claimants considered the handling of large quantities of mail to be an unfair burden and requested a hearing with the Superintendent under Rule 8 (b). It provides that,

"An employe disciplined or who considers himself unjustly treated shall have a fair and impartial hearing....."

The Carrier refused the requested hearing by insisting that Rule 8 (b) applies to disciplinary action only and that there is no rule or obligation requiring the Carrier to hear employe complaints about the kind or quantity of work assigned to them.

On November 26, 1957, the carrier discontinued passenger service at Houston, Texas. All positions at the passenger stations were abolished and the passenger station was closed.

Obviously, the claim or complaint is moot. We should not render a advisory interpretation of Rule 8 (b).

AWARD:

Claim dismissed.

/s/ Daniel C. Rogers
Daniel C. Rogers, Chairman
Fayette, Missouri

Dissenting as shown below
W. I. Christopher, Employee Member
Deputy President, O. R. T.
3860 Lindell Blvd.
St. Louis 8, Missouri

Dallas, Texas

August 1, 1958

/s/ A. F. Winkel
A. F. Winkel, Carrier Member
Asst. General Manager
Missouri-Kansas-Texas Lines
Dallas, Texas

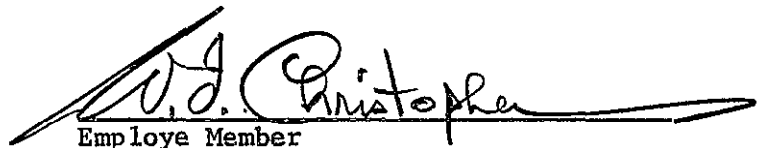
DISSENT TO AWARD NO. 23 OF M-K-T SPECIAL BOARD OF ADJUSTMENT NO. 226

The undersigned dissents from the Findings, Opinion and Award of the majority for the following reasons:

There is no need to repeat the claim other than to say that it was to the effect that the Carrier violated the Agreement when it refused to grant the requested hearing pursuant to Rule 8 (b) of the Agreement. The claim appealed was not on the matter of whether or not the Carrier violated the Agreement in requiring claimants to handle large quantities of mail at Houston but on the Carrier's refusal to grant the hearing on the ground that Rule 8 (b) applied to disciplinary action only. The Employees maintained that it also applied to any act of unjust treatment. The only matter before the Board was an interpretation of the rule. Because the requirement to handle the mail ceased on November 26, 1957 the majority declared the claim was moot and that this Board should not render an advisory interpretation of the rule.

The legal and obligated duty of this special board is the adjudication of disputes between this Carrier and those of its employees represented by The Order of Railroad Telegraphers. Such disputes are ones growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions. This dispute involves an interpretation of the Agreement applied to an actual circumstance. A moot case is one which seeks to determine an abstract question which does not arise upon existing facts or rights. By no stretch of the imagination is the claim here an abstract question, but one which factually exists and demands a determination of rights stipulated in a legal agreement made pursuant to the Railway Labor Act.

The Board is bound to adjudicate the dispute in the light of the Agreement and the facts existing at the time the Carrier refused to grant the hearing. The dismissal award is palpable error and this member has no hesitancy in disassociating himself from the majority in this instance.


Employee Member