



AWARD NO. 30
CASE NO. 64-27-22
ORT FILE: BU-4055-22

BEFORE THE
SPECIAL BOARD OF ADJUSTMENT NO. 226

THE ORDER OF RAILROAD TELEGRAPHERS)
)
vs.)
)
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY)
MISSOURI-KANSAS-TEXAS RAILROAD CO. OF TEXAS)

STATEMENT OF CLAIM:

1. Carrier violated Rule 1 (a) and 1 (d) of the Telegraphers' Agreement when, at Smithville, Texas on Saturday, June 7, 1958, at 2:30 p.m., it permitted or required one C. W. Moore, an employe not covered by the Agreement, to report the arrival of two trains at Smithville.

Carrier shall now be required to compensate Mr. J. H. Browning, telegrapher, Smithville, a day's pay of eight (8) hours at the minimum rate for telegraphers.

2. Carrier violated Rule 1 (a) and 1 (d) of the Telegraphers' Agreement when, at about 2:35 p.m., Saturday, June 7, 1958, it permitted or required Yardmaster Burch at Eureka Yard (Houston, Texas), an employe not covered by the Agreement, to report the arrival of a train at Eureka Yard.

Carrier shall now be required to compensate Mr. R. C. Cathey, telegrapher, Eureka Yard, a day's pay of eight (8) hours at the minimum rate for telegraphers.

3. Carrier violated Rule 1 (a) and 1 (d) of the Telegraphers' Agreement when, at 10:30 a.m., Saturday, June 7, 1958, it permitted or required one C. W. Moore, an employe not covered by the agreement, to report the arrival of train No. 74 at Smithville.

Carrier shall now be required to compensate Mr. A. E. Nuckels, agent-telegrapher, Smithville, a day's pay of eight (8) hours at the minimum rate for telegraphers.

TABULATION OF FACTS:

The following tabulation of facts taken from the record before the Special Board presents a "bird's eye" view of the alleged violations in this claim:

TABULATION OF FACTS
ALLEGED VIOLATIONS SATURDAY, JUNE 7, 1958

CLAIM NO. & STATION	TIME	NATURE OF ALLEGED VIOLATION	FACILITY USED	CLAIMANT	PERSONNEL		CLOSED OFFICE
					FROM	TO	
1. Smithville	2:30 p.m.	Terminal "OS" No. 74 and Exa fm North (Fullmer)	Message Tele- phone	Browning Tgr.	Asst. Supt. Miller at Waco	Caller Moore at Smith- ville	7:30 a.m. to 3:30 p.m.
2. Eureka Yd. (Houston)	2:35 p.m.	Terminal "OS" Ex 109-A South (Bullock)	Same	Cathey Tgr.	Ditto	Yard- master Burch at Eureka	All Day
3. Smithville	10:20 a.m.	Terminal "OS" No. 74 (Same No.74 as in 1.)	Same	Nuckels Agt-Tgr	Ch. Dis Lan- caster at Waco	Caller Moore at Smith- ville	7:30 a.m. to 3:30 p.m.

FINDINGS:

In the tabulation of facts it is shown that in each of the three instances of an alleged violation an officer of the Carrier used the message telephone to procure the information he wanted. From common knowledge it is a reasonable assumption that the message telephone is not in the train dispatcher's office and that it is not in a direct way related to his office or used by him as a means of dispatching trains or receiving "OS" reports either from terminal offices or from stations on Carriers' system. In the Smithville cases Chief Dispatcher Lancaster at 10:20 a.m. sought information on Train 74. At 2:30 p.m. Assistant Superintendent Miller sought the same information on Train 74. There can be no doubt but that the officers of the Carrier use the message telephone daily, when the offices are open as well as when they are "closed" to facilitate their work. The evidence does not prove

that the information communicated on the message telephone constituted official terminal "OS" reports. There is no evidence that the Telegrapher in each instance did not give full official terminal "OS" information on the trains in question to the Train Dispatcher on the Dispatchers' telephone after he came on duty at 3:30 p.m. Furthermore, it is evident that the information communicated was not such subject matter as is permitted to be forwarded and received by ORT employees only. Officers are entitled to have free access to the most available and convenient communications facilities the Carrier is able to furnish for performance of their work up and down a far-flung railroad system. They are not excluded by the Scope Rule from communicating in good faith by telephone with subordinate employees on all subjects of railroading. Nor do they effect violation of the ORT agreement by subordinate employees when they communicate in good faith by telephone with them on subjects pertinent to the performance of their official duties.

A W A R D

Claims denied.

s/ DANIEL C. ROGERS
Daniel C. Rogers, Chairman
Attorney at Law
211-212 Commercial Trust Company
Fayette, Missouri

DISSENTING
W. I. CHRISTOPHER, Employee Member
Deputy President, ORT
3860 Lindell Boulevard
St. Louis 8, Missouri

s/ A. F. WINKEL
A. F. Winkel, Carrier Member
Vice President - Personnel
Missouri-Kansas-Texas Railroad Company
Missouri-Kansas-Texas Railroad Co. of Texas
Dallas 2, Texas

Dallas, Texas

June 6, 1960

(BU-4055-22)