

AWARD NO. 39  
CASE NO. 100  
BU-5553-22

Dallas, Texas

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

STATEMENT OF CLAIM:

Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Lines that:

1. The Carrier violated the Agreement when it permitted or required Brakeman Placial of Train No. 72 to copy and handle train order No. 138 at Clinton, Mo., at 9:46 p.m., November 9, 1959.
2. Carrier shall now be required to pay the Agent-Telegrapher at Clinton as of that date, a day's pay at the minimum Telegraphers' rate.

### FINDINGS :

Mr. C. J. Harris is the Agent-Telegrapher at Clinton, Missouri. At 9:46 p.m. on November 9, 1959, when he was off duty, a brakeman on Train No. 72 copied a train order at Clinton from the Train Dispatcher to avoid delay to his train.

The ORT contends that the Agent-Telegrapher shall be paid the penalty provided by Rule 1 (d). The Carrier contends that the claim shall be denied.

In Award No. 38 we discussed Rule 1 (d) and 1 (e). We held there that Rule 1 (e) applies where member of train crews handle train orders during periods the telegrapher is off duty. We so hold here.

A fair inference from the record is that Mr. Harris was a resident at Clinton on the date the brakeman copied the train order. The Carrier, in urging that Rule 1 (e) applies instead of Rule 1 (d), practically admits the "availability" of Mr. Harris and practically admits he could be "promptly located" under the terms of Rule 1 (e). In cases where the telegrapher resides in the same small city where his telegraph office is located, it is prima facie that he is "available" and can be "promptly located" when he is off duty. No effort was made to call the Agent-Telegrapher to perform the train order service mentioned in the claim. The Carrier, therefore, is unable to contend and does not contend that he was not "available" or that he could not be "promptly located."

AWARD:

Claim for a "call" under Rule 1 (e) awarded.

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

/s/ W. I. Christopher  
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/s/ A. F. Winkel  
A. F. Winkel, Carrier Member  
Vice President - Personnel  
Missouri-Kansas-Texas Railroad Company  
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Dallas 2, Texas

Dallas, Texas

June 7, 1960

November 3, 1960