

SPECIAL BOARD OF ADJUSTMENT NO. 355

Award No. 52
Case No. 12
O.R.T.No. 2529

Parties:

THE ORDER OF RAILROAD TELEGRAPHERS
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 52

STATEMENT
OF CLAIM:

1. Carrier violated the Agreement when on dates of October 2, 12, 14, 15 and 18, 1956, it required or permitted various employees located at North Lima, Ohio, not covered by the Telegraphers' Agreement, to contact the train dispatcher direct at Dayton, Ohio or Deshler, Ohio to secure information on trains, transmit matters of record and messages over the dispatcher's telephone.
2. Carrier shall compensate the idle operator for the dates of October 2, 12, 14, 15 and 18, 1956, and all subsequent dates, for all subsequent violations which are described in the Statement of Facts on all three tricks at the points enumerated, eight hours' pay.

FINDINGS:

Decision here must turn on an interpretation of Article 5, Section 3 of the August 21, 1954 Agreement. It is as follows:

"3. Any claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. x x x"

It is the Carrier's position that the above section is restricted to "continuing violations"; that the uses of the telephone referred to in the claim here before us are "intermittent and irregular, although of frequent occurrence.

"The submission", Carrier argues further, "of the claim covered by your file A-1805 (occurrences on December 28, 1956 and January 11, 15 and 17, 1957) as a new claim is further evidence the Local Chairman did not consider those occurrences as being included in the subsequent dates referred to in the earlier case. x x x"

It is the Organization's position that Article 5, Section 3 of the August 21, 1954 Agreement

"plainly states that the claim may be filed at any time and the rights of the claimants will be fully protected by the filing of one claim or grievance based thereon. The only provision is that the alleged violation must be found to be a violation of the Agreement and must continue."

"Continuing" means that which continues, that which is continuous. Webster covers the various forms of the basic word fully.

"Continuous" is described as that which is "without break, cessation or interruption; without intervening space or time; uninterrupted; unbroken; continued."

It is clear the Carrier's position here is correct.

Having thus held, we must look to the occurrence of October 12, 1956:

"The Yardmaster used the Dispatcher's telephone to secure from the Dispatcher information as to the time which the CTC control board indicated that southbound trains had arrived at North Lima."

We agree with the Carrier that the above information does not fall within any of the three restricted categories and thus the claim will be denied.

A W A R D

Claim denied.

/s/ Edward A. Lynch
Edward A. Lynch
Chairman

/s/ B. N. Kinkead
B. N. Kinkead
Employee Member Dissenting

/s/ T. S. Woods
T. S. Woods
Carrier Member

Dated at Baltimore, Maryland,
this 20th day of February, 1962.

