

AWARD NO. 11  
DOCKET NO. 11  
ORT CASE 3515

SPECIAL BOARD OF ADJUSTMENT NO. 506

THE ORDER OF RAILROAD TELEGRAPHERS

vs.

MISSOURI PACIFIC RAILROAD COMPANY

Roy R. Ray, Referee

STATEMENT OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad (Gulf District), that:

CLAIM NO. 1

1. Carrier violated Scope Rule 1 of the Telegraphers' Agreement when, on the 22nd day of March, 1961, it caused, required and permitted Assistant Trainmaster J. N. Cunningham, an employee not under the Telegraphers' Agreement, to perform work of securing information BY RADIO from the train service employees on Train No. 67 and 'OS'ed' that train by Easterly, Texas (a blind siding). Furthermore, Assistant Trainmaster Cunningham secured information from the West Local and thereby on orders from Train Dispatcher C. H. Bailey issued orders directly to train 'West Local' BY RADIO directing said train to 'take the siding at Franklin, Texas, to let Train No. 67 by that point. Both of the above mentioned creates a violation of the Telegraphers' Agreement under Scope Rule 1 of said Agreement at both Easterly and Franklin.
2. Carrier shall compensate Telegrapher C. D. Jones, idle on rest day, eight hours at pro rata rate of \$2.5075 per hour or a total of \$20.03 for the violation permitted at Easterly, Texas.
3. Carrier shall compensate Agent-Telegrapher H. H. Furnish, one call, two (2) hours at punitive rate of \$3.67 per hour or a total of \$7.34 for the violation permitted and occurring at Franklin, Texas.

CLAIM NO. 2

1. Carrier violated Scope Rule 1 of the Telegraphers' Agreement when, on the 17th day of March, 1961, it caused, required and permitted Assistant Trainmaster J. N. Cunningham, an employee not under the Telegraphers' Agreement, to perform work of securing information BY RADIO from the train service employees on Train No. 176 as to their actual whereabouts and in doing so then 'OS'ed' No. 176 to Bryan, Texas. Assistant Trainmaster Cunningham was at Valley Junction, Texas, the point where the BASE RADIO STATION is located and from that point contacted a train 22 miles away.
2. Carrier shall compensate Agent-Telegrapher C. A. Richards, one call, two (2) hours at punitive rate of \$3.99 per hour or a total of \$7.98 for this violation.

CLAIM NO. 3

1. Carrier violated the Telegraphers' Agreement of March 1, 1952 when it permitted Engine Foreman M. Koler to OS No. 362 going by slow order at Basile at 703 PM March 14, 1961, from Kinder, La.
2. The Carrier shall compensate agent-telegrapher at Basile, Mr. R. P. Vidrine, for this violation in the amount of a call of two hours punitive time.

CLAIM NO. 4

1. The Carrier violated the Telegraphers' Agreement when it permitted the yardmaster at DeQuincy at 220 AM April 1, 1961 to request, by RADIO the whereabouts of No. 363 from Conductor Jarona on No. 392. Jarona reported that No. 363 was going by Fulton. In both cases the action of the yardmaster opened an office of communication at Yard Office DeQuincy and Conductor Jarona opened up an office of communication at Fulton by reporting Train No. 363.
2. The Carrier shall compensate Extra Telegrapher E. J. Richard in the amount of eight hours minimum telegraphers' rate, \$.42½, total \$19.38 for the violation at Yard Office at DeQuincy by the yardmaster and Telegrapher L. J. Bienvenu, for eight hours minimum telegraphers' rate, \$.42½ per hour, total \$19.38 for the violation of reporting train No. 363 by Conductor Jarona.

CLAIM NO. 5

1. The Carrier violated the Telegraphers' Agreement when it permitted BY RADIO other than a telegrapher at Anchorage Yard to open a telegraph office and secure an OS from No. 895 going by Loreauville, La. at 113 AM, March 22, 1961 and reporting same to the dispatcher with the information that No. 895 would be at Port Barre 235 AM.
2. The Carrier shall compensate the agent-phoner at Loreauville, La. on this date one call in the amount of two hours punitive time for this OS.
3. The Carrier shall compensate Telegrapher L. J. Bienvenu for eight hours at minimum rate for telegraphers, \$.42½ per hour, total \$19.38, for opening an office of communication at Anchorage Yard."

OPINION OF BOARD:

The five claims in this case charge that Carrier permitted employees other than Telegraphers to use a radio for sending and receiving messages, orders or reports of record concerning the movement of trains. Employees claim that the work involved belongs to the Telegraphers and that Carrier's action violated the Scope Rule and Rule 2(c) of the Agreement.

Carrier denies that the work performed is reserved to the Telegraphers. It says that in these cases the messages transmitted were not train orders or reports of record and that there was no OSing of trains and therefore no violation. However, as to Claims 1 and 2, Carrier takes the position that we may not consider them on the merits because Employees failed to comply with the provisions of Article V 1(b) of the 1954 National Agreement. This Section reads in part:

"If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within sixty days from receipt of notice of disallowance, and the representative of Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed . . . ." (Emphasis added)

We find that in this case when Employees appealed Claims Nos. 1 and 2 from the decision of the Superintendent to the Assistant General Manager, they failed to give the Superintendent any notice rejecting his decision of denial. Under the express language of the Section the matter is to be considered closed. Carrier did not expressly waive the requirement. Employees insist, however, that by failing to raise this point at the next level (Assistant General Manager), Carrier waived the requirement. We do not agree. As we have said in other Awards of this Board, we find nothing in the language of Article V 1(b) contemplating implied waiver. Here it was raised by the Chief Personnel Officer in his letter denying the claims. We conclude, therefore, that Claims 1 and 2 must be dismissed without a consideration of the merits.

We proceed to a consideration of the merits of the other three claims. Claim No. 3 charges that a Road Foreman of Engines, while enroute from Lake Charles to Alexandria, Louisiana, stopped at Kinder, Louisiana, and secured an OS on Train No. 362 by use of radio and relayed to Train Dispatcher that "No. 362 was by the slow order at Basile." In its submission Carrier says that what actually happened was: While at Kinder the Foreman overheard a radio conversation between the Conductor and Engineer on Train No. 362 in which the Conductor told his Engineer that the train was over the slow order. Later in conversation with the Dispatcher, the Foreman told him what he had heard on the radio. No train orders were issued as a result of the conversation. This version of the facts is not denied by Employees. In our judgment this did not constitute an OS of a train and we find no violation. Claim No. 3 is therefore without merit.

Claim No. 4 alleges that the Yardmaster at DeQuincy requested by radio the whereabouts of Train No. 363 from Conductor on Train 392. The Conductor then reported that No. 363 was going by Fulton. Train 363 was going west toward DeQuincy and Train 392 was going east toward Fulton. Carrier admits that the information was requested by the Yardmaster, but points out that it was not asked for or received by the Train Dispatcher. It says that no train order was involved as the Yardmasters have no responsibility for movements of trains on line of road, do not issue train orders or OS trains or accept an OS from anyone else. Carrier terms the conversation here a mere transmittal of intelligence.

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We believe that Carrier's position is sound. There is no evidence to indicate the Carrier had any particular need for this type of information or that it made any use of it or that the information was of the type of communication which is recorded. The Yardmaster at DeQuincy had no authority or responsibility with respect to the movement of either Train 363 or 392. Why he sought the information is not clear. It is significant that nothing in the record indicates that the message was transmitted to the Train Dispatcher at DeQuincy. As in the case of the telephone, the use of the radio by personnel other than Telegraphers violates the Agreement only when it is used to transmit train orders, reports of record or communications affecting the movement of trains. Here the Employees have failed to show that the communications in this claim fall into either class. They have no evidence showing that they were intended to or did affect the movement of trains. We do not believe the Agreement prohibits this type of conversation between a Yardmaster and a Conductor on one train about the location of another train. We hold, therefore, that there was no violation of the Agreement.

In Claim No. 5 Employees allege that a train service employee at Anchorage Yard, La. secured by radio an OS of Train 895 going by Loreauville, and that this was reported to the Dispatcher along with additional information that Train 895 would be at Port Barre at 2:35 a.m. Carrier gives the following version of what happened: Carrier maintains a train radio base station at Anchorage, which is 83 miles from Loreauville by rail and about 50 miles by air. The range of the radio station is approximately 25 miles. Due to unusual atmospheric conditions on March 22, 1961, the crew of Train 895 moving in the vicinity of Loreauville was able to hear the Yardmaster at Anchorage on the radio and engaged him in conversation concerning the unusual condition which made it possible for them to converse. The Yardmaster was not attempting to contact No. 895 and had no occasion to do so. Since that train originates at New Iberia and turns around at Port Barre, the Yardmaster at Anchorage was not concerned with its schedule or location, and had no need for the information and made no use of it.

There is nothing to show that the information was ever reported to the Train Dispatcher or anyone else. The claim as originally filed did not state that the dispatcher was notified that the train would be at Port Barre at a certain time. This first appeared in the letter of appeal to the Assistant General Manager. Carrier's version of the facts is not denied by Employees, and under these facts we find that the conversation which took place cannot be considered in any sense as an OS of a train. We hold, therefore, that there was no violation of the Agreement in this instance.

FINDINGS: As to Claims 1 and 2, Employees failed to comply with Article V 1(b) and the Railway Labor Act, and the Board is without jurisdiction to consider the claims on their merits.

As to Claims 3, 4 and 5, there was no violation of the Agreement.

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AWARD

Claims 1 and 2 dismissed.

Claims 3, 4 and 5 denied.

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/s/ Roy R. Ray  
Roy R. Ray - Chairman

/s/ D. A. Bobo  
D. A. Bobo - Employee Member

/s/ G. W. Johnson  
G. W. Johnson - Carrier Member

St. Louis, Missouri  
July 29, 1963  
Files 279-163, 279-167,  
279-168, 279-173  
279-175