AWARD NO. 12
DOCKET NO. 12
ORT CASE 3561

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 Company (Gulf District), that:

1. Carrier violated the Telegraphers' Agreement, Rule 2(d), when on the 22nd day of March 1961, it required Tel-Clerk R. D. Taylor to handle (receive, copy and deliver) train order No. 521, at Bloomington, Texas. Agent-Telegrapher S. L. Davidson was ready and available to perform this work, but was not called at 12:44 A.M.

2. Carrier shall compensate S. L. Davidson, Agent-Telegrapher, Bay City, Texas for one call, Rule 8(a), at the rate of $3.91 per hour for two hours: total amount $7.81."

OPINION OF BOARD:

The part of Carrier's main line in question here extends from Brownsville on the South to Houston on the North. On the date in question passenger train No. 316 operating northward was detoured at Bloomington over the Missouri Pacific westward to Victoria and thence Northeast over the Southern Pacific and Santa Fe tracks to Bay City. From Bloomington on the detour via Victoria it was designated as Passenger Extra 4251 North. On arrival at Bay City the train assumed its original designation of No. 316 for the remainder of the trip to Houston.

At Bloomington Train Order No. 521, covering a speed restriction between Brazoria and Angleton (North of Bay City), was copied by the telegrapher on duty and delivered to the train crews. The order was addressed to Train No. 316 at Bay City care of passenger Extra 4251 North.

Employees contend that since this order was not to become effective for train No. 316 until after it arrived at Bay City, Claimant Davidson, the regularly assigned Agent-Telegrapher at Bay City, should have been called to copy the order and deliver it to the crew of Train 316 when it arrived there. Employees say that Carrier's action in having the order copied at Bloomington and sent for delivery to Train 316 at Bay City was a violation of Rule 2(d) of the Agreement.

The language of Rule 2(d) is:

"When orders and/or clearance cards are copied at one point and sent for delivery to a train at a point, where telegraph or telephone service is maintained, the employee at such point will be paid for a call."

Carrier denies any violation of the Agreement and asserts that Rule 2(d) is not even applicable to the facts of this case. It says that Rule 2(d) was designed to cover the situation where an order is copied at one point and handed to a passing train for delivery to the train for which it is intended at another point where an operator is employed but not on duty; and that in this case there was only one train and the order was delivered by the telegrapher to the train for which it was intended. Carrier further asserts that no rule of the Agreement requires that a train order be given to a crew at the point where it becomes effective or is to be executed.

Employees have relied upon Award 10228 involving facts more or less similar to those in this case. But in that case the applicable rule provided that employees other than telegrapher and dispatchers should not be permitted to handle train orders at telegraph or telephone offices where a telegrapher was employed and available except in an emergency, in which event the telegrapher would be paid for a call. Some of the Awards relied upon by Carrier are in this same category. In applying this type of rule to similar fact situations, the Awards of the Third Division are not harmonious.

However, the rule allegedly violated by Carrier in this case, Rule 2(d), is different. It is more specific in that it concerns only orders copied at one point and sent for delivery to another point. Here the order was copied at an office other than Bay City but in our view it was not "sent for delivery to a train at Bay City." Here there were not two trains involved but only one with two different designations. The persons in charge of the train at Bloomington and to whom the order was delivered were the same persons who were to execute the order after the train passed Bay City. The order was not sent by them for delivery to another train at Bay City but was delivered to them at Bloomington to be executed after the train left Bay City.

The Employees are in effect contending that Rule 2(d) requires train orders to be copied and delivered at the telegraph station nearest the place where they are to be executed. But where as here the identity of the train and crew is the same, we find nothing in the rule, or in fact in the Agreement requiring every train order to be delivered by a telegrapher at the telegraph station nearest where it is to be executed.

The apparent purpose of Rule 2(d) is to preserve to telegraphers the work therein described, i.e., delivering train orders and to prevent encroachment upon that work by others not covered by the Agreement. We can see no attempted or actual encroachment in this case where the train order was executed by the same crew to which it was delivered by a telegrapher.

Essentially the question at issue here is: Did persons outside the Agreement perform telegraphers' work? We think not. In this case a telegrapher performed all the work to which the craft was entitled. He copied the train order and delivered it to the train crew at Bloomington. The train crew performed no work belonging to telegraphers. They did not accept the order for delivery to another train or make delivery to any other train. In fact, they retained it for execution after they left Bay City. We decline to indulge in the fiction that the crew took delivery

of the order addressed to them at Bloomington for the purpose of making a later delivery to themselves at Bay City.

We affirm the right of telegraphers to copy and deliver train orders. But we hold that under the circumstances of this case no delivery of the train order at Bay City was intended and that none was made. Our position is supported by Award 3779 between these same parties. It is the only Award, so far as we know, involving the application of a rule with the same language as 2(d) to a fact situation like that in our case. For the reasons expressed, the claim must be denied.

FINDINGS: That there was no violation of the Agreement.

AWARD

Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 506

/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
August 20, 1963
File 279-181