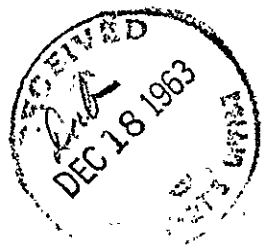
AWARD NO. 27
DOCKET NO. 27
ORT Case 3714

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:

1. Carrier violated and continues to violate Scope Rule 1, Rule 4, paragraph (C) and (D) and Rule 38 of the Telegraphers' Agreement when on October 9, 1961, it required and permitted and transferred the handling of less-than-carload freight shipments from the Agents at the following points in Texas, namely, Edinburg, Ed Couch, Harlingen, Mission, Lyford, Pharr, Mercedes, McAllen, Raymondville, LaFeria, Weslaco, Alamo, Rio Grande City, Donna, San Juan and Hidalgo, to the Missouri Pacific Freight Transport Company truck drivers for handling (delivering, receiving, receipting for and collecting monies therefrom) to and from San Benito, Texas, and to and from the receivers and shippers of less-than-carload freight in each of the points named herein, denying the aforementioned Agents of duties and revenues to which they are assigned.

2. Carrier shall compensate the Agents at Edinburg, Ed Couch, Harlingen, Mission, Lyford, Pharr, Mercedes, McAllen, Raymondville, LaFeria, Weslaco, Alamo, Rio Grande City, Donna, San Juan, Hidalgo, One Call, two hours at the punitive rate of the prevailing rate applicable at each station for each transaction affected by the Missouri Pacific Freight Transport Company's truck drivers prior to their hours of service, during their meal period and after the hours of service, and One Call at the punitive rate of pay for an available extra or idle on rest day telegrapher for each transaction during the hours the Agent at each named point is on duty, on each day beginning October 9, 1961 and continuing up to and including the day such violation is permitted and until such time Carrier restores the handling of less-than-carload freight to each of the agencies herein named. Carrier's records shall be checked in arriving at the correct employee to whom compensation is due.

3. Carrier violated and continues to violate Scope Rule 1 and Rule 3 of the Telegraphers' Agreement when on October 9, 1961, it required and permitted the Missouri Pacific Freight Transport Company truck drivers to act as Caretakers, Custodians, etc., at Val Verde, LaSara, Sebastian, Rio Mondo, Combs, Hargill (Texas points) and any other non-agency point, as Carrier's records at San Benito, Texas, will show, for handling (receiving, delivering, receipting for and collecting monies therefrom) on less-than-carload freight to and from San Benito, Texas, and to and from the receivers and shippers of less-than-carload freight at each of the points named herein, or to any other point the records may disclose, denying and depriving employees under

the purview of the Telegraphers' Agreement duties to which they are assigned by Agreement.

4. Carrier shall compensate the Extra or idle on rest day telegraphers who were available, as the Carrier's records will show, eight (8) hours at the pro rata prevailing telegrapher's rate, for each transaction affected by the Missouri Pacific Freight Transport Company's truck drivers on each day beginning October 9, 1961 and continuing up to and including the day such violations are permitted and until such time Carrier restores the handling of less-than-carload freight at each of the non-agency points to those to whom it rightfully belongs under the purview of the Telegraphers' Agreement."

OPINION OF BOARD:

This Docket comprises two separate claims. The first charges that Carrier violated Rules 1(Scope), 4(C) and (D) and 38 of the Agreement, when on October 9, 1961, it transferred the handling of LCL freight shipments from Agents at certain named stations to MPFT (now MPTL) truck drivers for the handling (delivering, receiving, receipting for and collecting monies therefrom). The second claim alleges that Carrier violated Rules 1 and 3 of the Agreement, when on October 9, 1961, it required or permitted MPTL truck drivers to act as caretakers, custodians, etc. at certain named and unnamed non-agency points for handling LCL freight (delivering, receiving, receipting for and collecting monies therefrom).

Employes contend that prior to October 9, 1961, the handling of LCL shipments was solely the responsibility of the Agents at the stations involved; that MPTL delivered the LCL freight to the Agent at the station where it was unloaded and that he had complete charge of pick-up and delivery service to the patrons; and that beginning on October 9, 1961 Carrier required MPTL truck drivers to assume all responsibility for handling LCL direct to the patron, receipting for freight picked up and delivered.

Aside from the merits Employes contend that Claim No. 2 should be sustained as presented due to the failure of Carrier to comply with the time limit provisions of Article V, Section 1(a) of the Agreement. This Section requires Carrier, in case of disallowance of a claim, to give notice in writing within 60 days to the person who filed the claim, stating the reason for such disallowance.

Carrier contends that the part of Claim No. 1 for the punitive rate was not progressed on the property; that Claim No. 2 and part of Claim No. 1 are for unnamed claimants and do not comply with Article V of the 1954 Agreement. As to the merits, Carrier denies any violation of the Agreement. It says that the work in question here does not belong to Employes by virtue of the Scope Rule; that the work has never been assigned to the Agent except in special cases where Carrier has contracted with him as an individual to perform the pick-up and delivery service. Carrier asserts that for a long time prior to October 9, 1961, the truck drivers had

delivered LCL freight to the consignee direct rather than depositing it in the freight house at the local agency. Furthermore, it contends that truck drivers did not perform any service at the named stations on and after October 9, 1961 that they had not performed prior to that time, nor that had not been performed by contract draymen for many years. It argues that the only change made on October 9, 1961 was the transfer of certain clerical duties to San Benito, including the preparation of freight bills on all LCL shipments for which bills had not been prepared at the point of origin, and the receiving from the truck drivers of monies which they had collected. Carrier points out that the claim is not for this but only for delivering, receiving, receipting for freight and collecting monies, all of which the truck drivers had been doing for many years without protest from Employes.

We turn first to the procedural questions. Employes say that the letter of Superintendent Parker, dated November 21, 1961 was not a notice of disallowance of Claim No. 2 since it specifically referred only to Claim No. 1 and did not mention Claim No. 2. They also say that Assistant General Manager Walker's letter of December 21, 1961 does not comply with the time limit provision of Article V, Section 1(a) because it was not addressed to the District Chairman who filed the claim. We cannot agree with the Employes' position as to Parker's letter of November 21st. In our view it must be considered a denial of Claim No. 2 as well as Claim No. 1. Although the first paragraph of the letter refers only to Claim No. 1, the second paragraph says: "I do not agree that the rules incorporated in your letter were violated in this case, see no basis for claims as presented and your request that Agents listed be compensated and work restored to Agents in question and instructions to MPFT truck drivers be rescinded is respectfully declined." Note the use of the plural claims. Employes apparently considered the letter as a denial of both claims, since in his letter of December 4, 1961, General Chairman Phillips appealed to Assistant General Manager Walker from Parker's decision as to both claims. After Walker's letter of December 21, 1961 denying the appeal, and specifically discussing Claim No. 2, General Chairman Phillips again appealed both claims.

While we consider the letter of November 13th as a denial of Claim No. 2, we might call attention to the fact that at no time while the claims were being processed on the property nor in the submission to this Board did Employes ever raise any question as to the time limit provisions. It was raised for the first time at the hearing. While in prior awards we have sustained procedural objections raised on the property or in the submission, we are not disposed to consider any matter including a procedural objection, which is raised for the first time at the hearing. We, therefore, feel that Employes' objection is not well taken.

As to Carrier's procedural objection concerning unnamed claimants, we need only refer to our prior awards in which we have said that Art. V, Sec. 1(a) does not require that claimants be named but only that they be easily and clearly identifiable by reference to Carrier's records. Here we think the requirement is satisfied and therefore reject Carrier's contention.

We proceed to a consideration of the claims on their merits. The claims charge that Carrier transferred the handling of LCL freight to MPTL truck drivers in violation of the Agreement. Handling, as used in the claims includes: "delivering, receiving, receipting for and collecting monies therefrom." In their submission Employes charge that Carrier transferred work formerly performed by the Agent at individual stations to the clerical force at San Benito. But in their claims Employes failed to complain of the preparation of waybills at San Benito or the receipt of money by the clerks at San Benito from the truck drivers and for this reason at the hearing this part of the claim was abandoned. Employes agreed that the claim was narrowed to the matter of truck drivers issuing receipts for freight picked up and for monies collected. The question to be decided, therefore, is whether the issuing of such receipts was work which belonged exclusively to the telegraphers at the stations involved.

Rules 4(c) and (d) and 38, relied upon by Employes, have no bearing on the question involved here. 4(c) merely says the classification of employes as to occupation is indicated in Rule 38 where rates of pay and classification are listed. 4(d) deals with the matter of changing classification and there is no charge in this case that changes in classification resulted from Carrier's action. Rule 3 likewise is not pertinent to Claim No. 2. It applies only where caretakers or custodians are employed at stations where agencies have been abolished. In this case it cannot be seriously contended that the truck drivers were employed at the non-agency stations. This leaves only the Scope Rule as a foundation for the claims. And the issue is whether under their Agreement, Employes have acquired the exclusive right to perform the work of receipting for monies and freight. Employes have relied upon the principle that all work at one man stations belongs to employes covered by the Telegraphers' Agreement. This argument could not be used to support Claim No. 1 in its entirety because only about half of the stations are one man stations. Furthermore, the principle applies only to work assigned by Carrier to the station and regularly performed by the Agent. It has no application to non-agency stations closed by Carrier with authority of the Railroad Commission.

Employes, however, assert that at the stations in question, this work had always been performed by the Agent prior to October 9, 1961. In this connection they say that prior to that date, the truck drivers delivered the freight to the freight house of the local agency from where the Agent had the responsibility for its delivery to the consignees. On the other hand, Carrier says that for many years prior to October 9, 1961 the truck drivers had delivered the freight direct to the consignees and received monies therefrom. What are the facts?

While there are some conflicting statements as to the situation prior to October 9, 1961, a preponderance of the evidence, including that in the submissions and that supplied by the parties subsequent to the hearing, does not support Employes' position. We believe the evidence fairly tends to establish the following:

When pick-up and delivery service was first instituted by Carrier in the early thirties, Carrier entered into contracts with local firms in cities and towns to perform the service of picking up shipments at the shippers' doors and taking

them to the station and delivering LCL shipments from the stations to the consignees. These contract draymen gave shippers receipts for freight picked up and when charges were due on freight delivered, they collected the amounts shown on the expense bill and turned the money over to the station agent designated by Carrier.

MPFT (now MPTL) was organized in 1938 and began operation in 1939 as an over the highway common carrier. It is a separate corporation wholly owned by Carrier. Shortly thereafter Carrier was having difficulty securing contract draymen at some stations and began to enter into individual contracts with MPTL to perform the pick-up and delivery service at particular stations. Beginning in 1954, a consolidated contract, superseding many of the individual contracts, was made covering a large number of stations. This has been superseded by a later consolidated contract in 1957 and another in 1960, which latter includes most all stations in the Rio Grande Valley.

For more than twenty years truck drivers of MPTL have performed this pick up and delivery service (including issuing receipts for freight picked up and for monies collected for freight delivered) at the shippers' and consignees' doors at various stations (open and closed) throughout the Rio Grande Valley. Prior to October 9, 1961 the service was being performed at all but four of the stations listed in Claim No. 1, and at most of the closed agencies listed in Claim No. 2.

The standard form contract which Carrier made with local draymen and that which it made with MPTL had essentially the same provisions covering the matter in issue in this case, i.e. issuance of receipts for freight picked up and monies collected. The significance of this is that it shows that the local draymen and MPTL truck drivers were performing this service long before the date of the alleged violation. Although the work was being performed by these persons outside the Telegraphers' Agreement at many of the stations listed under contracts going back as much as 20 years or more, Employes never complained about it until late 1961. The practice was well established and widespread by 1952 when the Parties entered into a new agreement which is silent on the matter.

The change which was made by Carrier effective October 9, 1961 in so far as it affected the stations involved here was that all accounting and clerical procedures relating to shipments to and from the stations was transferred to San Benito. Clerks at San Benito prepared the freight bills in all LCL shipments for which bills had not been prepared at the point of origin. When the driver left San Benito he did not need to stop at local stations but went direct to consignee's place to make deliveries. He collected money due as he had done previously but instead of taking it to the Agent at the local station took it back to the San Benito office.

In summary we make the following findings:

(1) No provision of the Telegraphers' Agreement, including the Scope Rule, specifically reserves the work in question here to persons covered by that Agreement;

(2) The Employes have not shown that through tradition, custom and practice, Telegraphers have acquired any exclusive right to the issuance of receipts for freight picked up or monies collected at the stations involved;

(3) Employes have not shown that prior to October 9, 1961, MPTL drivers delivered LCL freight to the Agents at the stations where it was unloaded and from where the Agents had the responsibility for delivery to consignees.

(4) Over a long period of years, Carrier has had this service (issuance of receipts) performed by local draymen and MPTL truck drivers at most of the stations involved without any protest from Employes;

(5) Nothing in the Agreement forbids Carrier from assigning this type of work to persons outside the Telegraphers' Agreement;

(6) The only change in the method of operation which occurred on and after October 9, 1961 was the issuance of freight bills at San Benito and the return of monies collected to San Benito.

Since Employes have failed to prove any violation of the Agreement, the Claims must be rejected.

FINDINGS: That the Agreement was not violated.

AWARD

Claims denied.

SPECIAL BOARD OF ADJUSTMENT NO. 506

Roy R. Ray

Roy R. Ray - Chairman

D. A. Bobo

D. A. Bobo - Employe Member

G. W. Johnson

G. W. Johnson - Carrier Member

St. Louis, Missouri
December 13, 1963
File 279-249