

AWARD NO. 3
DOCKET NO. 3
ORT CASE 3559

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. The Carrier caused violations of the Telegraphers' Agreement when it permitted on the morning of March 28, 1961, Engineer Porteau on No. 895 to report No. 895's arrival at Port Barre. At 2:42 AM March 30, 1961 Engineer Porteau on No. 895 to report No. 895's arrival at Port Barre, La. At 2:22 AM April 4th, 1961, a Crew Member on No. 895 to report No. 895's arrival at Port Barre, La.
2. The Carrier shall compensate Mr. N.D.Watson, Agt.-Telr., Port Barre, La., for a call of 2 hours punitive time for each of these violations.

CLAIM NO. 2

1. The Carrier caused a violation of the Telegraphers' Agreement when it permitted at 4:55 AM March 28th, 1961, Engineer Porteau on No. 895 into Pt. Barre, report to dispatcher that Lonnie Smart was showing up. Lonnie Smart was Condr. on the Anchorage-Eunice turn.
2. The Carrier shall compensate Agt.-Telr. N.D.Watson, Pt. Barre, La., for 1 call of 2 hours punitive time for this violation.

CLAIM NO. 3

1. The Carrier violated the Telegraphers' Agreement when it permitted Condr.Wallace, on No. 363, at Pt. Barre, La. at 12:06 AM April 8, 1961, reporting No. 363 was leaving Pt. Barre (NOW) in addition to other information regarding train.
2. The Carrier shall compensate Agt.-Telr. N.D.Watson, at Pt.Barre, La., for this violation in the amount of 1 call of 2 hours at punitive rate.

CLAIM NO. 4

1. The Carrier violated the Telegraphers' Agreement when it permitted Engr.Smith on No. 895 to report to Dispr. the arrival of No. 895 at Pt. Barre at 2:14 AM May 11, 1961.
2. The Carrier shall compensate Mr. N.D.Watson, Agt.-Telr., Pt. Barre, La., for this violation of Rule 2(c) of the Telegraphers' Agreement, in the amount of 1 call of 2 hrs. at punitive rate.

CLAIM NO. 5

1. The Carrier caused a violation of the Telegraphers' Agreement when it permitted at 2:08 AM April 11, 1961 a member of train crew on No. 895 to report train No. 895 at Pt. Barre to dispatcher on duty. Rule 2(c).
2. The Carrier shall compensate Agt.-Telr. N.D.Watson, Pt.Barre, La., for 1 call of two hours punitive time for this violation.

CLAIM NO. 6

1. The Carrier violated the Telegraphers' Agreement of March 1, 1952 when it permitted Condr. Walker No. 393 at Pt.Barre,La. at 5:45 AM June 8, 1961 to report No. 393 at Pt.Barre when Condr. Walker informed the dispatcher on duty that he would be ready to go at 6:20 AM or 6:30 AM.

2. The Carrier shall compensate Agt.-Telr. Mr. N.D.Watson at Pt.Barre,La. for this violation in the amount of 1 call of 2 hrs. at punitive overtime for this date.

OPINION OF BOARD:

Prior to February 18, 1961, there was assigned at Pt.Barre,La., in addition to the Agent-Teleg., a Teleg.-Clerk, with hours of 11:59 PM to 7:59 AM six days a week. His primary function was to handle train orders for No. 895 running from New Iberia through Pt. Barre to DeQuincy, La. Carrier abolished this position effective Feb. 20, 1961. Thereafter Carrier performed the communication service for trains in and out of Pt.Barre during the above hours in the following manner: The Condr., Eng., or some crew member on No. 895 or 393 would call the Dispatcher at DeQuincy from Pt.Barre, reporting the train at Pt.Barre and/or departure time. On the basis of the information given, the Dispr. would call the Agt.-Telr. at Pt. Barre to come down and copy the train orders for No. 895 to operate from Pt.Barre to DeQuincy. The six claims involved communications of the type mentioned above.

Employees say this work belonged to the Telegraphers and that by having train service employees report the arrival and departure of trains, the Carrier violated the Agreement. They rely on Rule 1 (Scope Rule) and Rule 2 (c). Carrier contends that in each of the instances involved, the Condr. or other member of the crew called the Dispr. at DeQuincy so that arrangements could be made to call the Agt.-Telr. down to the office at Pt.Barre to copy train orders to move the train to DeQuincy; and that on each occasion, the Agt-Telr. was given a call and paid for such a call. Thus they deny that the train service employees performed any telegrapher's work.

At the outset, however, Carrier challenges the authority of the Board to consider the merits of Claims 1, 2, 3, 5 and 6 on the ground that Employees failed to comply with the time limit requirements of Article V 1(b) of the 1954 National Agreement in appealing from the decision of the Asst. Gen. Mgr. to the Chief Pers. Officer. It is undisputed that the Asst. Gen. Mgr.'s letters denying claims 1, 2, 3 and 5 were dated May 22, 1961, and appeals were not taken until July 25, 1961, more than 60 days later. Claim No. 6 was denied by the Asst. Gen. Mgr. on Sept. 9, 1961, and appeal to the Chief Pers. Officer was not taken until Dec. 11, 1961, more than 60 days later.

Article V 1(b) reads in part, "If a disallowed claim or grievance is to be appealed, such appeal must be made in writing, and must be taken within sixty days from receipt of notice of disallowance..., failing to comply with this provision the matter shall be considered closed..."

The record clearly shows that Employees violated the provision in not taking the appeals within 60 days. Although the Chief Pers. Officer did not raise this point in his denial of the claims, there is nothing to show an express waiver of the requirement by Carrier. Well reasoned awards of the Third Division hold that failure to raise this point at the next level or even on the property does not amount to a waiver of this defense. Award 8564 (Weston). The requirement is made essential by Article V 1(b) and nothing in the language of the section contemplates implied waiver.

Employees urge that, despite previous decisions of the Third Division holding that such failure bars the claim and may be asserted at any time, in this case Carrier should be estopped to assert the time limit requirement because for years it has acquiesced in a practice of not insisting on the 60 days time limit in handling claims. We are not impressed with this argument because we do not agree that such failure by Carrier to assert the defense in other cases has any effect upon its right to use the defense here.

Though we are reluctant to dispose of any claim on technical or procedural grounds as opposed to the merits, in our judgment we have no alternative here but to dismiss Claims 1, 2, 3, 5 and 6 for want of jurisdiction.

We turn now to the merits of Claim No. 4. The Employee charge that the Engineer called the Dispr. on the phone and reported to him the arrival of No. 895 at Pt. Barre at 2:14 AM. Carrier argues that the call was for the purpose of getting authority to call the Telegr. to come down and call Dispr. to get the order to move the train to DeQuincy. It is not disputed that the Dispr. did call the Agt.-Telr. to come down to copy train orders from Dispr., and that he did come down and copy the train orders for which he was paid a call. The claim here is for a second call. The fact, however, that Carrier paid one call for work the Telegr. performed does not necessarily mean it is not liable for another call if the Engr. performed work belonging to the Telegrs.

Carrier says, and we agree, that it is well established that the use of the telephone is not reserved to the Telegraphers. But the use of the telephone for the transmission of reports of trains is reserved to the Telegraphers by Rule 2(c) which says that train and engine service employees will not be permitted or required to report trains by telephone or telegraph, except in emergency. Was this a train report? We think it was. It gave the time of arrival. Carrier in its rebuttal argues that the claim did not state that the Engr. reported the time of arrival at Pt. Barre, but rather that he called the Dispr. at a particular time. This was true as to some of the claims but not so as to Claim No. 4. It charges that Engr. Smith on Train 895 reported to Dispr. the arrival of his train at 2:14 AM.

Carrier has argued that there can be no violation of the Agreement unless the Dispr. enter the message on his train sheet. In our judgment, this is not the proper interpretation of the Agreement. The controlling matter is the character of the message. This was not mere conversation. It was information relied upon by the Dispr. in preparing his orders and we think that under Rule 2(c) it is work which belongs to the telegraphers. We conclude, therefore, that the Agreement was violated when this work was performed by the Engr.

FINDINGS: That Claims 1, 2, 3, 5 and 6 are barred by the failure of Employees to comply with Article V 1(b).

That the Agreement was violated as to Claim No. 4.

AWARD

Claims 1, 2, 3, 5 and 6 are dismissed.

Claim 4 is sustained.

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

July 29, 1963

Files 279-186, 279-188, 279-189,
279-190, 279-191, 279-221.