

Award No. 7
Docket No. 7
ORT Case No. 3510

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 Division (Gulf District), that:

CLAIM NO. 1

1. Carrier violated the Scope Rule, Rule 2, Paragraph (c) and Rule 5, paragraph (a) of the Telegraphers' Agreement, account it caused or required Brakeman Knox on Train No. 67 to open a telegraph office at a blind siding, Gause, Texas, at approximately 5:27 A.M., January 7, 1961, to perform duties of a Telegrapher in copying Train Order No. 225 and delivering the same to Train No. 67.
2. Carrier violated the provisions of Article V, Section 1(b) of the August 21, 1954 Agreement, when the decision denying the claim here involved was not mailed to the General Chairman within 60 days allowed for making such decisions.
3. Carrier shall compensate Telegrapher C. E. Landis 8 hours pro rata pay at the rate of \$2.5075 per hour for this violation.

CLAIM NO. 2

1. Carrier violated Scope Rule 1 of the Telegraphers' Agreement, when on the 24th day of March, 1961, it required or permitted Signal Maintainer Gest, an employee not covered by the Telegraphers' Agreement, to perform the duties of a Telegrapher by calling Train Dispatcher and securing line-up of trains direct from Dispatcher over portable telephone at Mile Post 72, Trinity Subdivision, which work is by the Agreement solely and exclusively reserved to employees covered by the Telegraphers' Agreement.
2. Carrier violated the provisions of Article V, Section 1(b) of the August 21, 1954 Agreement, when the decision denying the claim here involved was not mailed to the General Chairman within 60 days allowed for making such decisions.
3. Carrier shall compensate Telegrapher J. D. Whitmire, idle and extra, 8 hours at pro rata rate of the prevailing Telegraphers' rate for this violation.

CLAIM NO. 3

1. Carrier violated Scope Rule 1 of the Telegraphers' Agreement, when on the 28th day of March 1961, it required or permitted Section Foreman Elderman, an employee not covered by the Telegraphers' Agreement, to perform the duties of a Telegrapher by calling Train Dispatcher J. E. Carlson from Cronin, Texas, (a blind siding) and securing a line-up of trains direct from Dispatcher, which work by the Agreement, is solely and exclusively reserved to employees covered by the Telegraphers' Agreement.
2. Carrier violated the provisions of Article V, Section 1(b) of the August 21, 1954 Agreement, when the decision denying the claim here involved was not mailed to the General Chairman within 60 days allowed for making such decisions.
3. Carrier shall compensate Telegrapher E. E. Davis, extra and idle, 8 hours at the prevailing Telegraphers' rate of pro rata pay for this violation."

OPINION OF BOARD:

In each of the claims involved in this case Employees allege a violation of the Scope Rule, i.e., they charge that the brakeman in Claim No. 1, the signal maintainer in Claim No. 2, and the section foreman in Claim No. 3, performed work belonging to the telegraphers.

Apart from the merits, however, Employees contend that Carrier failed to comply with Article V of the 1954 National Agreement and that the claims must be allowed as presented. The three claims were filed at different times between January 12 and April 14, 1961, and were declined by the Superintendent and the Assistant General Manager on appeal. On June 5, 1961, all three claims were appealed to the Chief Personnel Officer by the General Chairman by separate letters.

On August 21, 1961, the General Chairman wrote the Chief Personnel Officer separate letters as to each of the three claims. In each instance he stated that he had received no reply regarding the appeal, and in accordance with Article V 1(a) of the 1954 National Agreement the claim was payable. On August 23, 1961, the Chief Personnel Officer replied to each of the General Chairman's letters, stating that, "Your letter of June 5, 1961, was replied to with our letter dated June 15, 1961, photo copy of which is attached hereto." A copy of the June 15th letter of declination was attached. On August 26, 1961, the General Chairman acknowledged receipt of the August 23rd letters but stated that he had not received the notice of disallowance of the claims within the time limit. He reiterated this in a conference. The Chief Personnel Officer, in a letter of October 5, 1961, said he was at a loss to understand why his letters of June 15th were not received unless they went astray en route. Carrier persisted in its refusal to pay the claims and Employees have appealed to this Board both on the alleged violation of Article V, and on the merits.

We will consider first the question of whether Carrier violated Article V 1(a). This section specifically provides: that if a claim or grievance is disallowed, "the Carrier shall within 60 days from the date the same is filed, notify

"whoever filed the claim or grievance in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented"

Article V 1(c) provides that appeals taken "to each succeeding officer" shall be governed by the same requirements set forth in paragraphs (a) and (b) (with certain exceptions not pertinent here.)

Under these provisions the burden is upon the Carrier to show a timely denial. In this case Carrier presented no evidence that the denial letters were received by the General Chairman within the time limit. Moreover, it had no proof of mailing of the letters sufficient to raise a presumption of receipt by the addressee. In his August 23rd letters the Chief Personnel Officer said that he replied on June 15th and enclosed a copy of the reply letters. In its submission Carrier says that there is no reason why Carrier's letters of June 15th should not have been received by the General Chairman; that they were written, signed and mailed in the usual and customary manner. This is a mere assertion of Carrier and is in no sense proof of receipt or even of mailing. Probably the best proof of receipt would be documentation obtainable through the use of certified or registered mail, return receipt requested. Another method would be the statement of some employee of Carrier charged with the responsibility in such matters showing that this letter was addressed, stamped and deposited in the U. S. mail box or in a place where letters were regularly collected for posting in the mails. The present record is devoid of any such proof. Awards 10173 and 10742 are in point here.

Since the Carrier has failed to show that a timely notice of denial of appeal was given the Employees, the express language of Article V 1(a) and (c) requires us to allow the claim as presented without giving any consideration to the merits of the dispute.

FINDINGS: That Carrier failed to comply with the time limit provisions of Article V, 1(a) and (c) and thus violated the Agreement.

AWARD

Claims 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
File 279-149