AWARD NO. 9
DOCKET NO. 9
ORT CASE 3531

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 Scope Rule 1 of The Telegraphers' Agreement, when on the 24th day of February, 1961, and on the 2nd day of March, 1961, it required or permitted Roadmaster S. G. York, 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 at blind siding telephone booths at Everman, Texas, and at Irene, Texas, respectively, which work is by the Agreement solely and exclusively reserved to employees covered by The Telegraphers' Agreement.

2. Carrier shall compensate Telegrapher T. M. Manning, idle on rest days 8 hour at pro rata rate of $2.5075 per hour of $20.06 per day for each day of the violations, February 24 and March 2, 1961. Total due Mr. Manning for both violations $40.12."

OPINION OF BOARD:

On February 24, 1961, the Roadmaster called the Train Dispatcher at Palestine, Texas, from a telephone booth at Everman, Texas, (where no Telegrapher was assigned) and asked if Train No. 176 was out of Mart, Texas, a station on the Fort Worth Subdivision. Dispatcher replied, "Left Valley Junction 9:40 a. m., be into Mart about 11:20 a.m., be out of Mart about noon." On March 2, 1961, the same Roadmaster called Dispatcher from a phone booth at Irene, Texas, and asked bout No.176 and Extra. Dispatcher replied "not into Mart yet; they are both going to run extra, called for 11:15 a.m. and 11:45 a.m."

Employees contend that in each instance Carrier permitted a non-telegrapher to receive a line-up from the dispatcher in violation of the Scope Rule of the Agreement. Carrier denies that the information reserved by the Roadmaster in either instance was a lineup. It says that it was merely information concerning the whereabouts of a train, which was necessary in the performance of the Roadmaster's duties.

Before reaching the merits of the claims, we must first consider Carrier's challenge to our jurisdiction. It says that the Board may not consider these claims on the merits for the following reasons: (1) As to claim concerning February 24, 1961, Employees, in appealing from the decision of the Superintendent, failed to notify him in writing that his decision had been rejected and thus violated Article V 1(b) of the 1954 National Agreement. (2) As to claim concerning March 2, 1961, Employees failed to appeal their claim from the decision of the Superintendent. Thus

they did not handle the claim in the usual manner on the property as required by Section 3 First (i) of the Railway Labor Act. Furthermore, they failed to comply with Article V 1(b) of the 1954 National Agreement which requires the appeal to be taken within sixty days.

We are of the opinion that Carrier's position is well taken in both instances. As to the claim concerning March 2, 1961, we find that Employees failed to include this claim in the appeal taken on April 15, 1961, to the General Manager. That letter contained only an appeal for the alleged February 24, violation. Employees urge that the statement at the end of the letter "our position and the circumstances are included in our letter of March 10th to Superintendent Sheppard (the letter setting forth both claims) is sufficient to show that they were also appealing the March 2nd claim." We do not agree. The statement is too indefinite and in no sense sufficient to constitute an appeal. Since the claim of March 2nd, was not appealed beyond the Superintendent, it is not properly before us for consideration on the merits.

As to the claim for February 24, 1961, we find that Employees failed to give the Superintendent a notice rejecting his decision denying the claim. This notice is an essential requirement of Article V 1(b) of the 1954 National Agreement, which reads in part as follows:

> "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)

The language of the section is clear and must be given effect. Carrier did not expressly waive the requirement. Employees argue, however, that since Carrier did not raise this point at the next level (Assistant General Manager) it waived the requirement. We do not agree. In our view nothing in the language of Article V 1(b) contemplates implied waiver. Here it was raised by the Chief Personnel Officer in his letter denying the claim. We, therefore, conclude that we are without jurisdiction to consider the claim on its merits. Both claims must, therefore, be dismissed.

FINDINGS: That the Employees failed to comply with Article V 1(b) of the 1954 National Agreement as well as Section 3, First (i) of the National Railway Labor Act and the Board is without jurisdiction to consider the claims on their merits.

AWARD

Claims dismissed.

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 279-160