



SPECIAL BOARD OF ADJUSTMENT NO. 525

AWARD NO. 29

CASE NO. 29

GRAND DIV.: ORT 3244

ORGANIZATION FILE:

R-1213

CARRIER FILE:

TE-6-60

EMPLOYEES' STATEMENT OF CLAIM:

1. The Carrier violated the terms of an agreement between the parties hereto when commencing Wednesday, March 30, 1960, it changed the hours of assignment at Thompson, Utah, contrary to the provisions of Rule 12(B) of said agreement.

2. The Carrier shall, because of the violation set out in item 1 of this statement of claim, compensate Agent-Telegrapher C. R. Brostrum for two (2) hours and fifteen (15) minutes for each day, Tuesday through Saturday and Relief Agent-Telegrapher L. C. Brownell for two (2) hours and fifteen (15) minutes for each Sunday and Monday commencing March 30, 1960, and so long thereafter as the violation continues.

SPECIFIC FINDINGS:

Prior to March 30, 1960, Agent-Telegrapher's position was assigned 7:15 A.M. to 3:15 P.M. seven days per week and second Telegrapher's position was assigned 9:45 P.M. to 5:45 A.M. seven days per week. On March 30, 1960, after serving the required 36 hours notice to the employees affected, the hours of assignment of the Agent-Telegrapher's position, first mentioned above, was changed to 9:30 A.M. to 5:30 P.M. seven days a week to meet service requirements. The hours of the second trick or night telegrapher remained unchanged.

The Organization complained that the change was made without conference or agreement which it contends was required by Rule 12(R).

The Carrier contends that there is no provision in Rule 12 or in any other rule of the Agreement which prohibits it from establishing

or changing the starting time at offices where only two men are employed without prior agreement. Carrier further submits that thirty-five years practice supports its contention.

Rule 12(B), which the Organization relies upon, reads:

"The spread of the starting time shall be fixed by agreement between the duly authorized representatives of the Carrier and the duly authorized representatives of the employees."

Rule 12(A), upon which Carrier's position rests, reads:

"(A) Regular assignments shall have a fixed starting time and the regular starting time shall not be changed without at least thirty-six (36) hours notice to the employees affected."

ISSUE: Which applies to the instant dispute?

The Carrier contends the term "spread of the starting time" has always been interpreted to mean specific time periods in which shift assignments must be started, i.e., between 6:00 A.M. and 9:00 A.M. and 6:00 P.M. and 9:00 P.M. for one shift assignments; that no time spread has been agreed upon with the Organization for two-man offices; that the rule places equal responsibility on the parties to agree upon "spread of the starting time;" that Carrier cannot be held to have violated something which had not been agreed upon; the Organization cannot veto change made by Carrier.

Past practice cannot negate a clearly stated rule such as Rule 12(B).

Here it is obvious that Carrier did not attempt to comply with Rule 12(B).

The appropriate penalty is to require payment to the incumbents the prorata rate from 7:15 A.M., the original starting time of the shift, to 9:30 A.M. to which hour it was unilaterally changed.

AWARD

Claims sustained.

SPECIAL BOARD OF ADJUSTMENT NO. 525

Denver, Colorado
March 12, 1964

(Signed) J. Glenn Donaldson
J. Glenn Donaldson, Neutral Member
Chairman

(Signed) R. K. Anthis
R. K. Anthis, Organization Member

(Signed) C. E. Baldrige (Dissent)
C. E. Baldrige, Carrier Member