Award No. 56
Docket No. 56

MOP File No.	ORT File No.
380-1471	1172-C
380-1469	1172-A
380-1470	1172-B
380-1480	1172-D

SPECIAL BOARD OF ADJUSTMENT NO. 131

ORDER OF RAILROAD TELEGRAPHERS
and
MISSOURI PACIFIC RAILROAD COMPANY

Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad that:

CASE NO. 1

1. Carrier violated the terms of the agreement between the parties when on September 21, 22, 23, 24, 25, 28, 29, 30, 1954, it directed T. W. Burns, regularly assigned Manager, CTC Telegrapher, Poplar Bluff Relay Office, to leave train orders and clearance cards pinned to the train register for later delivery to trains leaving after Claimant Burns had gone off duty and telegraph office had been closed.

2. Carrier shall now pay T. W. Burns for a call of three hours at pro rata rate of pay for September 21, 22, 23, 24, 25, 28, 29 and 30, 1954, when he was available and entitled to perform the work.

CASE NO. 2

1. Carrier violated the terms of the agreement between the parties when on September 20, 23, 24, 25, 26, 27, 30 and October 16, 18, 21, 22, 23, 25, 28, 29 and 30, 1954, it directed L. R. Bagley, regularly assigned night Chief CTC Telegrapher, Poplar Bluff Relay Office, to leave train orders and clearance cards pinned to the train register for later delivery to trains leaving after Claimant Bagley had gone off duty and telegraph office had been closed.

2. Carrier violated the terms of the agreement between the parties when on October 1, 2, 4, 7, 8, 9, 11 and 15, it required or permitted employes not covered by the agreement at Poplar Bluff relay office to handle (receive and deliver) train orders and clearance cards for trains leaving after Claimant Bagley had gone off duty and telegraph office had been closed.

3. Carrier shall now pay L. R. Bagley for a three hour call at the pro rata rate of pay for each of the following days: September 20, 23, 24, 25, 26, 27, 30, and October 1, 2, 4, 7, 8, 9, 11, 15, 16, 18, 21, 22, 23, 25, 28, 29 and 30, when he was available and entitled to perform the work.

CASE NO. 3

1. Carrier violated the terms of the agreement between the parties when on September 22, 26, 27, 28 and 29, 1954, it directed B. L. Shadoin, regularly assigned rest day relief CTC Telegrapher, Poplar Bluff Relay Office, to leave train orders and clearance cards pinned to the train register for later delivery to trains leaving after Claimant Shadoin had gone off duty and telegraph office had been closed.

2. Carrier shall now pay B. L. Shadoin for a call of 3 hours pro rata rate of pay for September 22, 26, 27, 28 and 29, 1954, when she was available and entitled to perform the work.

OPINION OF BOARD: It is alleged here that Rule 1(b) (the Scope Rule) was violated on the dates enumerated in the numerous claims with which we are here concerned when the respondent required the named claimants to leave train orders and clearance cards pinned to the train register for later delivery to trains leaving after the said claimants had gone off duty, and that the Carrier further violated the agreement on other enumerated dates when it required or permitted employes not covered by the agreement to handle, that is, receive and deliver, train orders and clearance cards after one of the named claimants had gone off duty and the telegraph office was closed. For the violation alleged, reparations are sought for 3 hours at the pro rata rate, that is, a call for each of the dates set forth in the claims on which the numerous violations occurred.

This docket consists of three cases involving three different claimants, namely, T. W. Burns, L. R. Bagley and B. L. Shadoin, and the issue in each violation is identical except those in which claimant L. R. Bagley is involved, when alleged violations occurred on October 1, 2, 4, 7, 8, 9, 11 and 15, when train orders and clearance cards were handled by the train dispatcher when claimant Bagley was off duty and the telegraph office closed.

Rule 1(b) reads as follows:

"No other employe except train dispatcher, and those covered by this agreement, will be permitted to handle train orders, except that in an emergency the conductor may copy a train order from the train dispatcher and if there be a telegrapher employed at the point where the conductor copied the order, he (the telegrapher) will be paid a call (three hours at the pro rata hourly rate)."

The Organization pointed out that at the time the violations enumerated above occurred there were two 7-day positions at the location in question, one was the manager with assigned hours 8:00 a.m. to 4:00 p.m., and the other was Night Chief Operator with assigned hours 8:45 p.m. to 4:45 a.m. These two positions were covered by rest day relief assignment held by claimant Shadoin.

The office was closed during two periods of the day and night, namely, from 4:00 p.m. to 8:45 p.m. and from 4:45 a.m. to 8:00 a.m. It was during these two periods when the office was closed that the violations occurred.

The Organization pointed out that the Scope Rule of the agreement clearly gave to the telegraphers the exclusive right to handle train orders and clearance cards and that the handling of same included the physical delivery thereof, and that in the instant cases the delivery was not achieved within the meaning of the agreement when the said claimants were directed to leave train orders and clearance cards on the train register or where the said train orders and clearance cards were handled by a train dispatcher.

The respondent took the position that there was no provision in the Scope Rule which abrogated its right to instruct a telegrapher who had received and copied a train order to leave same on the train register to be picked up at a later time.

The Carrier contended that when the same was received and copied, the telegrapher's work was done and that, in the instant cases, no other "handling" of the said orders or clearance cards was evident.

The respondent further asserted that the Organization could not identify any violative act of the agreement nor identify any person who had been guilty of receiving nor delivering copy of a train order and that in no instance present here was any employe covered by the effective agreement deprived of any work.

The respondent further contended that there is nothing in the call rule which would require the payment of reparations here sought since the call rule provides only for payment of 3 hours for service actually performed and that, in this instance, no service was performed by any of the claimants on any of the enumerated dates.

It is to be noted that Rule 1(b) is a prohibitory rule insofar as the Carrier is concerned in that, with the exception of train dispatchers, no employe not covered by the Telegraphers' Agreement is permitted to handle train orders except by conductors under certain emergency conditions which do not exist here. Since it is clear that train dispatchers may, as well as telegraphers, handle train orders, those alleged violations involving claimant L. R. Bagley in which train orders were handled by the train dispatcher are not good claims and must, of necessity, be denied.

Thus, we come to that portion of those claims involving each of the named claimants in which train orders and clearance cards were ordered pinned to the train register for later delivery when the claimants were not on duty and the telegraph office closed.

An examination of the facts of record in these claims do not disclose a valid reason why this Board should depart from a long line of awards on the Third Division of the National Railroad Adjustment Board which have held that the acts here complained of are in contravention of the Scope Rule of the Telegraphers' Agreement. We think that these portions of these claims are valid for the reason stated in Award 5013, in which it was held:

> "We are not disposed to labor long on the Carrier's first point. This Division of the Board, after extended and spirited debate on the subject, is now definitely committed to the view that a Train Order Rule containing language of the kind to be found in the one now under consideration is clear and unambiguous and that its terms, particularly the phrase 'to handle train orders', are to be construed as contemplating the receiving, the copying, and the delivering of train orders to the train crews which are to execute them."

and in Award 5122, wherein it was held:

> "It has long been the rule that the work of a class of employes reserved to them in a collective agreement cannot be delegated to others without violating the agreement. The Telegraphers' Agreement reserves the sending, receiving, copying and delivering of train orders to the telegraphers. It is also well established that the receiving of such communications includes copying and delivering to the train crews which are to execute them. Award 1713. The handling of train orders at a station where there is an employe covered by the Telegraphers' Agreement is work belonging to that employe. His right to the work cannot be circumvented by devices such as depositing the train orders in waybill boxes or attaching them to train registers."

For the reasons stated, these claims are meritorious.

FINDINGS: The Special Board of Adjustment No. 117, upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as approved June 21, 1934.

That this Special Board of Adjustment has jurisdiction over the dispute involved herein; and,

That the Carrier violated the effective agreement.

AWARD

Case No. 1, involving T. W. Burns, sustained for a call of 3 hours at the pro rata rate.

Case No. 2, involving L. R. Bagley, sustained for a call of 3 hours at the pro rata rate for September 20, 23, 24, 25, 26, 27, 30 and October 16, 18, 21, 22, 23, 25, 28, 29 and 30, 1954. The request for pay of a call at 3 hours at the pro rata rate to L. R. Bagley for October 1, 2, 4, 7, 9, 11 and 15, is denied.

Case No. 3, involving B. L. Shadoin, sustained for a call of 3 hours at the pro rata rate.

SPECIAL BOARD OF ADJUSTMENT NO. 117

Livingston Smith - Chairman

C. O. Griffith - Employe Member

G. W. Johnson - Carrier Member

St. Louis, Missouri
August 9, 1956