

Under the
RAILWAY LABOR ACT
Special Board of Adjustment No. 226

Hearings April 9-30, 1958

Dallas, Texas

Award No. 25



PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF ORT CLAIM NO. 6-22:

Claim in behalf of Telegrapher J. S. Ellis that he was improperly dismissed from the service of the M-K-T Railroad on June 19, 1957; and that Mr. Ellis shall now be ordered reinstated and paid for all time lost less amount earned in any other service.

FINDINGS AND OPINION:

J. S. Ellis, nearly 60 years of age, with 20 years seniority with the Carrier, was temporarily working first trick at the M-K-T and Missouri Pacific jointly operated cross over tower at Wagoner, Oklahoma, on June 5, 1957, with hours 8:00 a.m. to 4:00 p.m. (The second trick was his regular assignment.)

At 3:05 p.m. on that date a train order was sent to him and the operator at South Coffeyville by the Missouri Pacific train dispatcher reading as follows:

"Order No. 228

C & E No. 192
Wagoner

No. 175 Eng MV 752 and No. 161 Eng 582 have right over No. 192 Eng 4283 South Coffeyville to Claremore and hold main track at Claremore and wait South Coffeyville until 440 PM Sageeyah 545 PM for No. 192.

Made complete:

3:05 PM

FMG

Ellis, Opr."

For some reason, which constitutes the basis of his dismissal by the M-K-T, the train order which Ellis delivered to No. 192 did not contain the following words and figures at the beginning of the order:

"No. 175 Eng MV 752 and "

The omission was discovered when No. 192 reached Claremore. It was then corrected by the dispatcher. No delays or accidents resulted from the omission.

An investigation was held at Muskogee, June 14, 1957. It was attended by both M-K-T and Missouri Pacific officers and witnesses. It was conducted by the Missouri Pacific trainmaster.

Ellis testified that he had been having trouble recently when he would push the plug into the telephone jax box. He testified that a loose or defective connection would cause a skip of a few words at a time. That such a defect did exist was confirmed by witnesses, including the Missouri Pacific train dispatcher, the M-K-T signal maintainer and two telegraphers.

Ellis testified, moreover, that he repeated the train order exactly as he had received it, that is, with the omission of words and figures quoted above. But he admitted he had not heard the repetition of the order by the operator at South Claremore, because he had taken off his head gear to go the levers to make a lineup for No. 192 to do some switching.

The Missouri Pacific train dispatcher and the Missouri Pacific operator at South Claremore contradicted Ellis by testifying that he repeated the full text of the train order exactly as it had been sent by the train dispatcher.

An inference arose that Ellis had copied correctly the original order in full but, after repeating it, he had recopied it and upon recopying it had omitted the words:

"No. 175 Eng Mv 752 and ".

Ellis denied that he had recopied the order. He insisted that if he had recopied it he would have repeated the re-copy to the dispatcher, as required by train order rules. He also explained that if he had recopied it, it would have been more likely that he would omit words in the middle of the order instead of omitting the first few words at the beginning of the order.

No explanation was offered by the Missouri Pacific as to why Ellis needed to re-copy the order. Telegraph operators sometimes recopied train orders but an experienced telephone-telegraph operator should seldom need to recopy a train order. The Missouri Pacific conducted the investigation and rendered a verdict against Mr. Ellis on the facts. We have summarized the facts to show that, plausibly, they could support a finding of Mr. Ellis' innocence as well as his guilt.

Although, reasonable men could reach different conclusions, as indicated, we will not disturb the finding made by the Missouri Pacific.

The M-K-T assessed the penalty of dismissal. It was assessed by the Superintendent at Parsons. It is the penalty which we find to be the critical portion of this appeal.

The Special Board finds that it will be in the best interest of all concerned for the Carrier to reinstate Mr. J. S. Ellis forthwith. He shall not be compensated for time lost between the date of his dismissal, June 19, 1957, and January 20, 1958. He shall be paid for time lost between January 20, 1958, and date of his reinstatement, less amount earned in any other service, as provided in Rule 8 (g). If he earned a vacation in 1956 normally to be enjoyed in 1957, such vacation compensation shall be paid as required by the rules, if not taken. He shall be placed on the extra board when reinstated.

AWARD: Claim sustained as per findings and opinion.

/s/ Daniel C. Rogers
Daniel C. Rogers, Chairman
Fayette, Missouri

/s/ W. I. Christopher
W. I. Christopher, Employee Member
Deputy President, O. R. T.
3860 Lindell Blvd.
St. Louis 8, Missouri

Dallas, Texas

August 1, 1958

/s/ A. F. Winkel
A. F. Winkel, Carrier Member
Ass't. General Manager
Missouri-Kansas-Texas Lines
Dallas, Texas