



B E F O R E
SPECIAL BOARD OF ADJUSTMENT NO. 226
Dallas, Texas

AWARD NO. 28

THE ORDER OF RAILROAD TELEGRAPHERS)

vs.)

) CLAIM NO. 54-22

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY)

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS)

STATEMENT OF CLAIM:

"1. Carrier violated Rule 1 of the Telegraphers' Agreement when it permitted the main man (caretaker) at Chouteau, Oklahoma to 'OS' Train No. 74, as passing that station at 3:20 p.m., January 25, 1958, with a hot box.

"2. Carrier shall be required to pay Agent-Telegrapher Webb Fleming a day's pay at the minimum rate for Telegraphers plus his regular rate, according to Rule 1 (d)."

FINDINGS:

The facts are undisputed. On Saturday, January 25, 1958, rest day for the Agent-Telegrapher, at 3:20 p.m., as train No. 74 was passing the station at Chouteau, Oklahoma, the Caretaker, who was on duty, observed a hot box on a car located about 5 cars behind the engine. He immediately signalled No. 74's train crew that they had a hot box in the train. Not sure whether the train crew received his signal, the Caretaker went to the Dispatcher's telephone at the station and notified the Train Dispatcher of the hot box. At Smith, Oklahoma, a blind siding, 3.6 miles north of Chouteau, a member of the crew of train No. 74 advised the Dispatcher by telephone that a hot box signal had been received at Chouteau and that the hot box car would be set out at Smith. This information that No. 74 would be delayed at Smith enabled the Dispatcher to put out a train order advantageous to movements of passenger trains Nos. 5 and 6.

Under General Rule D it was the duty of the Caretaker to "...report to the proper officer...any condition or practice which may imperil the safety of trains, passengers or employees..." He reported a condition that imperiled the safety of Train No. 74. It was a condition that the Agent-Telegrapher would have been duty bound to report if he had been on duty at the time.

The question for decision is whether Rule 1 (d) was violated when the Caretaker made the report on the telephone to the Dispatcher.

Rule 1 (d) provides that,

"Station or other employees at closed offices or non-telegraph offices shall not be required to handle train orders, block or report trains, receive or forward messages, by telegraph, telephone....but if they are used in emergency to perform any of

"the above service, the pay for the Agent or Telegrapher at that office for the day on which service is rendered shall be the minimum rate per day for Telegraphers as set forth in this agreement plus regular rate."

Chouteau was a "closed office" on the date in question. It was a rest day for the Agent-Telegrapher. Seeing that Train No. 74 was in great danger while running with a hot box, a station employee not covered by the ORT agreement forwarded a message by telephone to the Dispatcher. It was the kind of message or train report which has been communicated by telegraph or telephone by agents and telegraphers to train dispatchers since the earliest days of railroading. Moreover, it was the kind of message or train report which train dispatchers customarily enter of record at the time of receipt. It was also the kind of message or train report which is customarily entered of record at the forwarding office.

In Rule 1 (d) the Carrier has agreed that if such a message or train report is communicated by "station or other employees" who may be on duty during the hours when an established Agent-Telegrapher office is "closed", it will pay the Agent-Telegrapher at that office the minimum rate per day for Telegraphers as set forth in the agreement. This is the price the Carrier has contracted to pay, in the form of a penalty, when any communication of the nature of this one is handled by others than an Agent-Telegrapher during the hours when an Agent-Telegrapher office is "closed". Compensating for the rarely administered penalty provided for in Rule 1 (d) is the fact that the Carrier is able to effect savings in its operations by using caretakers when an Agent-Telegrapher station is "closed."

AWARD:

Claim sustained for day's pay at minimum rate for telegrapher.

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