



AWARD NO. 31  
CASE NO. 73  
ORT FILE: BU-4054-22

BEFORE THE  
SPECIAL BOARD OF ADJUSTMENT No. 226

THE ORDER OF RAILROAD TELEGRAPHERS     )  
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  )  
  )  
  )  
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY)  
MISSOURI-KANSAS-TEXAS R.R.CO.OF TEXAS )

STATEMENT OF CLAIM:

1. The Carrier violated the Telegraphers' Agreement when:
  - (a) On July 3, 1958, some time prior to 8:30 p.m., it permitted or required the train crew caller at Franklin, Missouri, an employe not covered by the Agreement, to use the radio-telephone to contact train No. 78, while en route to Franklin, and obtain a report from the crew as to probable time of arrival and to report same to the train dispatcher, in violation of Rules 1(a) and 1 (d).
  - (b) On July 4, 1958, sometime prior to 8:30 p.m., it permitted or required the train crew caller at Franklin, Missouri, an employe not covered by the Agreement, to use the radio-telephone to contact train Extra 2090 North, while en route to Franklin, and obtain a report from the crew as to probable time of arrival and to report same to the train dispatcher, in violation of Rules 1 (a) and 1 (d).
  - (c) On July 7, 1958, some time prior to 8:30 p.m., it permitted or required the train crew caller at Franklin, Missouri, an employe not covered by the Agreement, to use the radio-telephone to contact train Extra 226-A North, while en route to Franklin, and obtain a report from the crew as to the probable time of arrival and to report same to the train dispatcher, in violation of Rules 1 (a) and 1 (d).
2. Carrier shall now be required to pay Telegrapher O. K. Clay, Franklin, Missouri, a day's pay at the minimum rate per day for telegraphers, plus regular rate, for each of the dates enumerated above, because of said violation.

FINDINGS:

Rule 1 (a), the Scope Rule, enumerates job titles and provides that employes performing work under one or more job titles shall be subject to the terms of

the ORT contract. Rule 1 (a) does not describe the work to be performed under each job title. It does not guarantee work. Even Addendum No.3 guarantees work only "when any of these positions are in effect."

On the other hand Rule 1 (a) does define the employees included therein in terms of well-known mechanical devices and machines which they operate in course of their employment, such as the telegraph, the telephone, mechanical telegraph machines, also train blocking equipment and interlocking equipment used at towers and railroad cross-overs. It should be noted too that the equipment described for performance of communications work is all related to telegraph or telephone lines or systems, consisting of wires, poles, tubes, cables, etcetera.

The Radio is not mentioned in Rule 1 (a). We are forbidden to include it.

So far as communications subject matter itself is concerned, there is no question that reports on train arrivals and departures, calling time, loads, empties, tonnage, and all similar train operating information, comprise the traditional subject matter of communications which have been handled by telegraphers from the beginning of railroading. But such subject matter has been handled by means of the mechanical devices, machines and equipment negotiated into Rule 1 (a). The Carrier states that the use of radio for communications is so flexible that it has never been willing to place limitations upon its use in labor agreements of any of its employees. It has in fact declined to negotiate any use whatsoever of radio by ORT employees. It states in its brief however that in 1945 its ORT employees, with radio in mind, proposed to negotiate into Rule 1 (a) an amendment which would have given to them "any position where communications service is used." This proposed amendment was rejected.

Conceivably, by new inventions train orders and railroad communications of all kinds might almost instantaneously be recorded or otherwise delivered to train crews and distant offices, respectively, by radar or nuclear energy. Surely, no one

craft could successfully lay claim to such envisioned communications work under existing labor agreements. It would be analogous to trainmen laying claim to freight business transported by railroad owned barges or to passenger business transported by railroad owned airplanes.

Finally, the foregoing analysis is consistent with and supported by Rule 1 (d). Rule 1 (d) provides a penalty only for those communications which are transmitted by the mechanical means specified therein, namely, "by telegraph, telephone or mechanical telegraph machines."

Clearly, neither Rule 1 (a) nor Rule 1 (d) has been violated.

A W A R D

Claims denied.

s/ DANIEL C. ROGERS,  
Daniel C. Rogers, Chairman  
Attorney at Law  
211-212 Commercial Trust Company  
Fayette, Missouri

DISSENTING  
W. I. Christopher, Employee Member  
Deputy President, ORT  
3860 Lindell Boulevard  
St. Louis 8, Missouri

s/ A. F. WINKEL  
A. F. Winkel, Carrier Member  
Vice President - Personnel  
Missouri-Kansas-Texas Railroad Company  
Missouri-Kansas-Texas R.R.Co. of Texas  
Dallas 2, Texas

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June 6, 1960