

AWARD NO: 38
CASE NO. 99
ORT FILE: BU-5552-22

ORT FILE: BU-5552-22

RECEIVED
DEC 15 1930
J. BERTA

STATEMENT OF CLAIM:

1. The Carrier violated the Agreement when it permitted or required Brakeman Rogers of Extra 66-C North to copy and handle Train Order No. 106 at St. Charles, Mo., at 7:53 p.m., November 8, 1959.
2. Carrier shall now be required to pay the Agent-Telegrapher at St. Charles, as of that date, a day's pay at the minimum Telegrapher's rate.

There is no dispute as to the essential facts: The brakeman copied the train order at St. Charles at 7:53 p.m., November 8, 1959, when the Agent-Telegrapher was not on duty. The Agent-Telegrapher resided in Augusta, 27.2 rail miles from St. Charles.

The Carrier contends that Rule 1 (e), and not Rule 1 (d), is applicable. The Carrier further contends that Rule 1 (e), the applicable rule, was not violated.

"(d) 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 or mechanical telegraph machines, 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 such service is rendered shall be the minimum rate per day for Telegraphers as set forth in this agreement plus regular rate. Such employee will be permitted to secure train sights for purpose of marking bulletin boards only.

"NOTE: (It is understood that "closed offices" also mean an office where other employees may be working not covered by this agreement, or an office which is kept open a part of the day or night.)"

Rule 1 (e) is, as follows:

"(e) No employee other than covered by this Agreement and Train Dispatchers will be permitted to handle train orders at Telegraph or Telephone offices where a Telegrapher is employed and is available or can be promptly located except in an emergency, in which case the telegrapher will be paid for the call (and the dispatcher will notify the Superintendent so proper record and allowance will be made)."

A cardinal rule of contract construction is that all provisions of the contract which deal with a particular subject must be construed together in order to determine how the parties themselves intended to treat the particular subject.

Rule 1 (e) is the older of the two rules. It is a special rule dealing with train orders only. Since it was not appealed when Rule 1 (d) was negotiated into the contract, Rule 1 (d) so far as train orders are concerned, constitutes only an expansion of the special train order rule.

Rule 1 (d) was negotiated into the contract primarily to include "station or other employees" who may handle not only train orders but perform other kinds of ORT communications work at "closed offices." It also includes employees "not covered by this agreement", who may be "working" at a "closed office" or an office which is "kept open a part of the day or night."

None of the powers of Rule 1 (e) were transferred to Rule 1 (d).

From the earliest days of railroading the substance of Rule 1 (e) has covered the handling of train orders by members of train crews at hours when the telegrapher was off duty. It contemplates that a "call" shall be given by the train in need of train order assistance. Through the years there has not been any confusion between the parties about the meaning of Rule 1 (e).

We find therefore that the provisions of Rule 1 (e) apply here.

It is self-evident that a telegrapher residing 27.2 rail miles from the station where he is needed to perform train order service is neither "available" nor can he be "promptly located" to answer a "call" for train order service when he is off duty.

AWARD:

Claim 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 Blvd.
St. Louis 8, Missouri

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

Dallas, Texas

June 7, 1960

November 2, 1960