

SPECIAL BOARD OF ADJUSTMENT NO. 305



THE ORDER OF RAILROAD TELEGRAPHERS

vs.

MISSOURI PACIFIC RAILROAD COMPANY
(Southern & Western Districts)

AWARD NO. 36
DOCKET NO. 36
(CASE 2880)

STATEMENT OF CLAIM:

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

1. Carrier violated the Agreement between the parties when on April 12, 1958, at 11:59 p.m. it declared abolished the positions of CTC telegraphers at Gurdon, Arkansas, without actually abolishing the work of such positions, and acting unilaterally transferred the work of these positions to employees not covered by the Telegraphers' Agreement.
2. Carrier shall restore the work of the positions to telegraphers and shall compensate

H. W. McCain
M. S. Nelson
Guy Wilson
J. D. Foshee
J. W. Harris

and any other telegraphers adversely affected in this improper transfer of work, all loss of pay and expenses, beginning with April 12, 1958.

3. Compensation shall be for one day's pay at the Gurdon, Arkansas CTC Telegrapher-Clerk rate for each work day of the position, in addition to any other pay made to these employees for any other work. Expenses shall be actually expenses incurred by these employees which would not have occurred had they remained on the positions which were declared abolished."

OPINION OF BOARD:

A preliminary examination of the submission of the parties in the instant dispute convinced the Board that the American Train Dispatchers Association represented employees involved and, accordingly, under date of May 17, 1960, the Board gave notice to Mr. W. E. Butler, General Chairman, and Mr. R. C. Coutts, President, of the American Train Dispatchers Association, that the dispute covered by Docket No. 36 would be heard by Special Board of Adjustment No. 305, established by agreement between The Order of Railroad Telegraphers and the Missouri Pacific Railroad Company, at 10:00 A.M. (CDST), Wednesday, June 1, 1960, at the Board's hearing room in St. Louis, Missouri. Pursuant to said notice, Mr. W. E. Butler, General Chairman, and Mr. R. M. Crawford, Vice President, the American Train Dispatchers Association, appeared before the Board on the scheduled date and presented their position as to the issue in

Prior to the date in question the centralized traffic control operated by telegrapher-clerks from Hope and Gurdon, Arkansas, was consolidated and the centralized traffic control machine placed in the dispatcher's office at Gurdon. The dispatching office at Little Rock was then moved from Little Rock to Gurdon, and effective April 12, 1958 the centralized traffic control machine at Gurdon was placed in charge of the train dispatchers at Gurdon. Thereafter, certain telegrapher-clerk positions at Hope and Gurdon were abolished. It is this action by the Carrier that the Telegraphers' Organization contends constitutes a violation of the Telegraphers' Agreement.

We have searched Scope Rule 1 of the Agreement and do not find any reference therein to centralized traffic control operators, neither do we find any other provision of the Agreement which constitutes an assignment of the work in dispute to telegraphers exclusively.

We have also taken cognizance of the Agreement between the Carrier and the American Train Dispatchers Association and we do not find that the scope rule contained in that Agreement makes any reference to centralized traffic control operators; neither do we find any other provision in that Agreement which constitutes an assignment of the work in dispute to dispatchers exclusively.

Our attention has been directed to a dispute progressed to the Third Division, National Railroad Adjustment Board, by the American Train Dispatchers Association on this railroad, concerning the employees entitled to man centralized control machines, which was "****remanded for conference between the three parties in interest; i.e., the Dispatchers, the Telegraphers, and the carrier to adjust if possible, by agreement, failing which their proper forum is the National Mediation Board," by Award No. 641, dated May 4, 1958. The remand was made by the Board for the following reason, as stated in Opinion of Board:

"This case is quite similar to the situation involved in Award No. 616. It presents a real jurisdictional dispute between the Dispatchers and the Telegraphers as to how these machines should be manned."

There is a tripartite agreement, dated February 1, 1939, in evidence between the Missouri Pacific Railroad Company, the American Train Dispatchers Association and The Order of Railroad Telegraphers, dealing with the question of the operation of centralized traffic control machines. Our attention has been specifically directed by all parties here involved to the Appendix made a part of that Agreement, which reads as follows:

"It is mutually agreed that separate and apart from the agreement to which this is a part, covering disputes concerning the operation of plants at Pacific, Leavenworth, Wagstaff, Cole Junction and Benton that

The operation of signals and switches by means of electrically operated or other devices, including Centralized Traffic Control units now installed in train dispatching offices and now assigned to train dispatchers may continue to be assigned to train dispatchers at such offices, but no extension of existing facilities now handled by train dispatchers in such

" offices nor any subsequent assignment of train dispatchers to operation of signals and switches by means of electrically operated or other devices, including Centralized Traffic Control units, will be made prior to conference with representatives of the train dispatchers and telegraphers committees."

It will be noted that both The Order of Railroad Telegraphers and the American Train Dispatchers Association, subsequent to the effective date of the tripartite agreement of February 1, 1939, gave agreement recognition to not only the three-way agreement but to the Appendix thereto, which we have quoted above.

It is undisputed in the record that on March 24, 1958, the Carrier notified Mr. G. L. McDonald, General Chairman, The Order of Railroad Telegraphers, and Mr. W. E. Butler, General Chairman, American Train Dispatchers Association, of its desire to meet with them in accordance with the provisions of the Appendix of the Agreement dated February 1, 1939, in connection with the matter of operation of centralized traffic control machine at Gurdon, Arkansas. Wednesday, April 2, 1958, was suggested as the date for the parties to meet in St. Louis, but it was agreed to meet on March 28, 1958, which was done, and the conference was confirmed to the General Chairmen, jointly, by Carrier, under date of March 31, 1958. In confirming the conference, Carrier stated that it was its purpose to make a consolidation of the control boards located at Hope and Gurdon, the consolidated board to be located at Gurdon, and that the same would be manned by dispatchers. It further advised that the dispatchers now located at Little Rock who have the territory south of Little Rock would be relocated at Gurdon. Carrier has complied with the provision of the Appendix Rule as above referred to.

It is apparent from the foregoing that the Carrier was of the opinion that it had fulfilled its obligation under the Appendix Rule to the tripartite agreement of February 1, 1939.

Because of this contention by the Carrier, we have carefully reviewed the language contained in the Appendix Rule and we are forced to the conclusion that the Carrier is correct in its position.

Having reached this conclusion, we must reach the further conclusion that Carrier has not violated the Telegraphers' or other Agreements between the parties and that the claims here before us must therefore be denied.

As stated by the Third Division in Award No. 641, this is a real jurisdictional dispute between the Dispatchers and Telegraphers as to how these machines will be manned and that in the absence of an Agreement as to how these machines should be manned, the question is one for negotiation.

In reaching this decision we are not unmindful of Award No. 55 of Special Board of Adjustment No. 117 which remanded a similar dispute which arose by reason of Carrier's action in moving certain centralized traffic control work from Dexter, Missouri to Poplar Bluff, Missouri, January 18, 1952. Our action in denying the claims rather than remanding the dispute to the parties is for the reason that the parties did enter into negotiations during 1939 concerning the manning of centralized traffic control machines which resulted in the Appendix Rule being added to

the tripartite agreement of February 1, 1939, which provided that no extension of existing facilities now handled by train dispatchers, nor any subsequent assignment of train dispatchers, to operation of signals and switches by means of electrically operated or other devices, including centralized traffic control units, would be made prior to conference with representatives of the Train Dispatchers' and Telegraphers' Committees.

It being undisputed that the required conference was held, there has been a compliance with the obligations of the Carrier to that Agreement.

FINDINGS: Carrier did not violate the Agreement as alleged herein.

A W A R D

Claims denied in accordance with the foregoing
Opinion.

SPECIAL BOARD OF ADJUSTMENT NO. 305

/s/ Donald F. McMahon
Donald F. McMahon - Chairman

Dissenting
R. K. Anthis - Organization Member
Reserve the right to state reasons
for a Dissenting Opinion.

/s/ G. W. Johnson
G. W. Johnson - Carrier Member

St. Louis, Missouri
June 10, 1960

File 380-1879

DISSENT TO AWARD NO. 36, DOCKET NO. 36
SPECIAL BOARD OF ADJUSTMENT NO. 305

The action taken here by the majority of this Special Board is erroneous and inconsistent with the facts and constitutes a reversal on the part of the neutral from previous awards enunciated by him. Fallacy and error are compounded by the majority to a degree seldom or never witnessed. Contradictory statements exist. I could not, in good conscience, accept the statements contained in the Opinion and must submit this dissent.

In the first paragraph on page two of the Award we find a confusion of statement. The majority first makes the declaration that the centralized traffic control, operated at Hope and Gurdon, was consolidated and the control machine placed in the dispatcher's office at Gurdon. The fact is that when this was done there was no train dispatcher's office at Gurdon. There was a telegraph office manned by employees represented by The Order of Railroad Telegraphers.

In spite of the first statement wholly inconsistent with facts, the Opinion disputes the first statement by pointing out in the next sentence that the dispatchers were not moved from Little Rock to Gurdon until after the consolidation of the Hope and Gurdon machines. I can see no excuse for such a deliberate contradictory statement appearing in the Opinion.

This is followed by a statement on the part of the majority that they have searched Scope Rule 1 of the Agreement and do not find any reference therein to centralized traffic control operators, and they follow this misstatement of fact with another misstatement to the effect that no place else in the Agreement between the Carrier and The Order of Railroad Telegraphers do they find a provision constituting an assignment of work in dispute to telegraphers exclusively, notwithstanding the provisions of other rules in the Agreement that are a part of the Scope Rule.

This Special Board is fully cognizant of that Scope Rule of the Agreement which names certain classifications and then contains the statement, "and other positions included in the wage schedule." The wage schedule is part and parcel of the entire Agreement and is shown therein as Rule 21. An examination of Rule 21 (a) which the Board as a whole checked at the hearings, disclosed that the positions of CTC Telegrapher-Clerk at Gurdon are shown on page 43 of the Agreement in Rule 21, and insofar as the operation of centralized traffic control machines at Gurdon is concerned, the manner in which the Scope Rule enunciates the inclusion of Rule 21 and the publication of those positions on page 43 in Rule 21 demonstrates conclusively that insofar as centralized traffic control machines at Gurdon, Arkansas are concerned, that work belongs exclusively to employees represented by The Order of Railroad Telegraphers. This relationship between the Scope Rule, 1, and the Wage Schedule Rule, 21, was discussed at some length in the Board hearing so that beyond any question the majority knew that relationship and how it was brought into being as it now exists. For the majority to now deny that relationship is an inconsistency bordering on the absurd.

Continuing, the majority next directs its attention to Award No. 616, Third Division, National Railroad Adjustment Board, and attempts to place it along side of the claim here under consideration. Such an attempt is just another example of the fuzzy thinking on the part of the majority. The majority knew that in Case and Award 616 there was no such a Scope Rule and Wage Rule in the relationship as exists in this case and to cite that as a parallel is entirely foreign to the issue. No parallel between the two exists.

The majority then relies, or gives the impression that it relies, for its erroneous award, on the language contained in the Appendix to the effect that the Carrier will not make any subsequent assignments of train dispatchers to the work here being considered prior to conference with representatives of the two organizations. This language, nor any other language, impinges on the right of the employees to charge a violation of any rule in the Agreement, which is exactly what the employees have done in this case. The language of the Appendix does not authorize the Carrier to indulge in a flagrant violation of the rules of the Agreement without facing the charge of a violation on the part of the employees and prosecution of claim or claims because of such violation. The language of the Appendix does not give the Carrier the right to ignore and set aside any of the rules of the Agreement it has joined with the employees' representatives in making. For the majority of this Board to hold otherwise, to argue in defense of its position that the simple declaration as contained in the Appendix sets aside all the rules of the Agreement, is a travesty upon the sense of fair play. It is indeed a departure from a fair-minded approach to the problem poised by the claim. When the employees of this Organization or any other organization acquiesced in the Appendix referred to in the majority Opinion, neither relinquished any right to prosecute the violation of any rule in their Agreement and insofar as the employees represented by The Order of Railroad Telegraphers are concerned, that prosecution is exactly what was undertaken. That the facts were not accepted and considered in a fair-minded and reasonable manner is a reproach to the majority and the Opinion enunciated by that majority.

Now as to the reversal of position on the part of the neutral. In Award 8773, this same neutral writing the majority Opinion, had this to say:

"The record is clear that at the time the CTC Operator classification was negotiated into the Scope Rule and only in 1954, the dispatchers' agreement contained no such position, when the CTC machine was put into operation."

In this current case the same neutral involved in Award 8773, National Railroad Adjustment Board, Third Division, has this to say:

"We have also taken cognizance of the Agreement between the Carrier and the American Train Dispatchers Association and we do not find any reference therein to centralized traffic control operators;"

Compare the two statements. They are so nearly similar as to be considered as identical. Yet, in the dispute involving Award 8773, this same neutral supported the claimant, The Order of Railroad Telegraphers. However, in this dispute, Award No. 36, the same neutral has issued an award in favor of the Carrier. How can this neutral justify such a reversal?

Identical disputes involved, identical Scope Rules involved and yet we find the same neutral taking one road in Award 8773 and reversing himself and taking the opposite road in Award No. 36 of this Special Board No. 305.

It would be difficult, perhaps, to define the cause of this complete reversal. The most charitable comment would be to say that reason and judgment has fled and we here witness a display of perceptive ability by the majority of infantile proportions.

Consideration of facts presented to this Special Board and the review of the majority Opinion and Award is thoroughly convincing that my dissent is justified. I do dissent.

Dissenting as shown below



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July 5, 1960