



AWARD NO. 6
DOCKET NO. 6

SPECIAL BOARD OF ADJUSTMENT NO. 305

THE ORDER OF RAILROAD TELEGRAPHERS
vs.
MISSOURI PACIFIC RAILROAD COMPANY
(Gulf District)

STATEMENT OF CLAIM:

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

1. Carrier violated the Agreement between the parties when, in changing the assigned rest days of J. A. Shelton, regular assigned incumbent third shift telegrapher position, Spring, Texas, it suspended him from work on April 25 and 26, 1957.
2. Carrier shall now compensate J. A. Shelton for two days (April 25 and 26, 1957) at the pro rata rate of his position."

OPINION OF BOARD:

Claimant herein held assignment to third shift Telegrapher position, Spring, Texas, with hours of service from 12:00 midnight to 8:00 A.M., and with rest days of Monday and Tuesday. On April 20, 1957, Carrier, by telegraphic instructions, changed the rest days of the assignment to Thursday and Friday, effective April 23, 1957.

The record shows that the employee worked his regular assignment the week of April 17, 1957, taking his regular rest days of Monday, April 22, and Tuesday, April 23. He worked his position April 24, beginning his work week on that day, as set out in the instructions of Carrier. Under such instructions he was not permitted to work Thursday, April 25, nor Friday, April 26, such days being the rest days of the assignment as directed by Carrier's instructions.

The Organization contends that by reason of Carrier's refusal to allow the employee to work April 25 and 26, he was deprived of two days' work by Carrier, and it takes the position that the employee began the new work week of his regular assignment on April 24, and such new work week could not become effective until Saturday, April 27. It is contended that such refusal to allow the employee to work April 25 and 26 constitutes a violation of Rules 15-1(a), 15-1(d) and 1(i) of the effective Agreement between the parties.

Carrier contends that under the provision of Rule 15-1(1) that it was permitted to change the rest days, with the proviso that proper notice be given the affected employees. Such proper notice was given by Carrier on April 20, 1957.

The Board is of the opinion that Carrier did not violate the Agreement as alleged; that it complied with the provisions of Rule 15-1(1) in changing the rest days assigned, and that more than 72 hours' written notice was given by Carrier as provided.

AWARD NO. 6
DOCKET NO. 6

PAGE 2.

We do not agree with the contention that the employe on April 24 began the work week of his regular assignment before his rest days were changed, effective April 23. When he worked April 24, this was the first day of his newly assigned work week as changed by Carrier. Carrier has in no way violated the provisions of Rule No. 9, Guarantee Rule.

The assignment involved here is a seven-day weekly position, with five working days and two consecutive days for rest period. The employe worked his five days beginning April 24, was on his rest days April 25 and 26. No change has been made by Carrier in the number of work days, only the rest days were changed as provided by Rule 15-1(1) of the Agreement.

Many cases have been cited the Board supporting the contentions of the parties herein. After a thorough review of such cited cases, we conclude and agree with the principles as are cited by awards of Special Board of Adjustment No. 117, Award No. 28, and Third Division, N. R. A. B. Awards 5854, 5998 and 6211.

For reasons stated, the claim should be denied.

FINDINGS:

Carrier did not violate the Agreement as alleged.

A W A R D

Claim denied as per Opinion and Findings.

SPECIAL BOARD OF ADJUSTMENT NO. 305

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

Dissenting
R. K. Anthis - Organization Member

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

St. Louis, Missouri
September 25, 1959

ORGANIZATION'S DISSENT TO AWARDS NOS. 6, 7 AND 9
OF SPECIAL BOARD OF ADJUSTMENT NO. 305

The Employes must dissent. The decision by the majority is grossly erroneous. The decision is based upon the decisions in Awards Nos. 5854, 5998 and 6211 of the Third Division and Award No. 28 of Special Board of Adjustment No. 117, which are wrong on their very face.

Award No. 5854 is premised on the following erroneous reasoning:

"We can find no evidence in this case that when they wrote their agreement, the parties intended to so penalize the Carrier."

Whether a penalty did or did not accrue to the Carrier is not the issue. An inspection of the report of the Emergency Board which considered the ruled upon the establishment of the forty-hour week, (the five-day week), discloses the expressions of that Board; the rules written by that Board when called to assist the parties in reaching a settlement, had for one primary purpose the establishment of working rules here applicable to this dispute, that would not result in penalizing the employe for the convenience of the Carrier, Award 5854 reversed the primary purpose above cited. It penalized the employe for the convenience of the Carrier. This Award compounds that error.

It is the consensus of the reasoned opinions of the Awards from the Third Division, as well as Special Board of Adjustment No. 170, Award No. 47, that "There should be no dispute over the fact that a 'Work Week' consists of five working days to be followed by two consecutive rest days. It is also a fact that there is no rule in the agreement which limits the Carrier as to when it can make a change in assigned rest days effective, but this right of the Carrier is conditioned of the provisions of Rule 15." Likewise this principle holds true with respect to loss of wages occasioned by a change of rest days where the basic agreement contains a daily guarantee rule, such as Rule 9. This is supported by Third Division, N. R. A. B., Awards Nos. 5129, 5619, 7324, 8103, 8144, 8145 and 8857, which is bonafide evidence that the majority opinioned in this case erred in its opinion.

/s/ R. K. Anthis
R. K. Anthis-Organization Member

St. Louis, Missouri
September 25, 1959