



AWARD NO. 9
DOCKET NO. 9

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 Tele-
graphers on the Missouri Pacific Railroad (Gulf District), that:

1. Carrier violated the agreement between the parties when in changing the assigned rest days of R. H. Johnson, regular assigned incumbent, second shift operator position, Jewett, Texas, it suspended him from work on January 6 and 7, 1958.
2. Carrier shall now compensate R. H. Johnson for two days (January 6 and 7, 1958) at the pro rata rate of his position.

OPINION OF BOARD:

It has been stipulated between the parties that the award as made in Award No. 6, Docket No. 6, before this Board, shall be applicable in the docket here, there being a similarity in the facts and rules involved here as applied to Award No. 6, Docket No. 6.

FINDINGS:

Claim should be denied as per the foregoing Opinion and Findings.

AWARD

Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 305

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

Dissenting
R. K. Anthis - Organization Member

G. W. Johnson
G. W. Johnson - Carrier Member

St. Louis, Missouri
September 25, 1959

(The Employes' dissent is the same as stated in Award No. 6)

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