

SPECIAL BOARD OF ADJUSTMENT NO. 355

Award No. 141
Case No. None
(BU 8004-33)

Parties: THE ORDER OF RAILROAD TELEGRAPHERS
THE BALTIMORE AND OHIO RAILROAD COMPANY

AWARD IN DOCKET NO. 141

STATEMENT
OF CLAIM:

1. Carrier violated the Agreement between the parties when it required or permitted an employee not covered by said Agreement to use the telephone at Mile Post 93-20, Toledo Division, to communicate direct with the train dispatcher on April 19, 1960.
2. Carrier shall be required to compensate Operator D. L. Jackson in the amount of a day's pay (eight hours) on April 19, 1960.

FINDINGS:

We are here concerned with the derailment of 18 cars of coal at 12:25 a.m., on April 19, 1960, one mile north of Kirkwood.

More than 14 hours later, at 2:45 p.m., a Track Supervisor telephoned the Train Dispatcher and gave him "a slow order of 5 miles per hour between Mile Post 93-20 and 93-39 account detour track at derailment. The track supervisor also advised him to be alert for close clearances of derailed cars, and that he would give this information to an operator for transmission. The track supervisor further stated that he was at a portable telephone at the scene of the derailment and would let the dispatcher know when he would be ready since he had to move a couple more cars."

Under many of our prior awards involving the use of the telephone, we would deny this claim because the information was later given to an operator for transmission.

What distinguishes this claim is that the situation here is specifically covered by Article 35:

"It is not the disposition of the railroad to displace operators by having trainmen or other employees operate the telephone for the purpose of blocking trains, handling train orders or messages, except in case of such emergencies as interruption or suspension of service by reason of wrecks Use of the telephone by other employees under this exception may only be continued until an employee covered by this agreement can be made available"

Use of the telephone more than 14 hours after the wreck occurred -- especially in the absence of evidence of any attempt on Carrier's part to make an operator available -- does not meet the requirements of the Agreement. This was not a case of "opening track." A sustaining award is required.

A W A R D

Claim sustained.

/s/ Edward A. Lynch
Edward A. Lynch
Chairman

/s/ R. K. Anthis
R. K. Anthis, Employee Member

/s/ T. S. Woods
T. S. Woods, Carrier Member

Dated at Baltimore, Maryland,
this 31st day of May, 1963