Award No. 5
Docket No. 5
ORT Case No. 3466

SPECIAL BOARD OF ADJUSTMENT NO. 506

THE ORDER OF RAILROAD TELEGRAPHERS
vs.
MISSOURI PACIFIC RAILROAD COMPANY

Roy R. Ray, Referee

STATEMENT OF CLAIM:

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

1. Carrier is violating the Scope Rule, No. 1, of the Telegraphers' Agreement in permitting or requiring the dispatchers at Kingsville, Texas to call the yard office at San Antonio for information of record concerning train departures, after the telegrapher in 'MS' Office goes off duty at 11:00 P.M. each night, from employees not covered by the Telegraphers' Agreement.

2. Carrier shall compensate Telegrapher G. M. Perales one call, Telegrapher L. J. Verhunce three calls, and Telegrapher G. H. Ratliffe one call, three hours each call at $2.69 per hour."

OPINION OF BOARD:

The claim arises out of transmission by the Yardmaster at San Antonio of certain alleged messages of record during the hours between 11 p.m. and 7 a.m. when no telegraphers were on duty. After Carrier abolished the third-shift position it installed a telephone in the Yard Office. The Employees allege, and Carrier does not deny, that on five different occasions between December 20, 1960 and January 1, 1961, the third-shift assistant chief train dispatcher called the Yardmaster direct.

Employees claim that under the Scope Rule and based on tradition, custom and practice, the transmission of such messages was work belonging to the telegraphers, and that in San Antonio, this work had been handled by the third-shift telegrapher until the Carrier abolished that position just prior to the time the present claim arose. Employees contend also that the performance of this work by the dispatcher and yardmaster is a clear violation of Rule 2(c) of the Agreement, which prohibits train and engine service employees from reporting trains.

Carrier challenges the right of the Board to consider the case on its merits on the ground that Employees failed to comply with Article V 1(b) of the 1954 National Agreement, when in appealing case to the Chief Personnel Officer, they failed to give the Assistant General Manager notice that his decision declining the claim was rejected. Without waiving this point, Carrier contends that the telephone conversations involved in this claim were necessary in order for the train dispatcher to secure information essential to planning his work of preparing and issuing orders concerning train movements; and further that it has long been a common practice for dispatchers to secure information in this way; that these calls did not amount to OSing of trains; were not communication of record and did not violate the Agreement.

Did the Employees fail to comply with Article V 1(b) in not giving the Assistant General Manager a rejection notice? Employees assert that the General Chairman's letter of March 9th was in effect such a notice. We do not agree. In that letter the General Chairman said the "organization does not accept Carrier's position in that verbal exchanges pertaining to train movement of any description can be calssified as mere phone conversations," and requested a conference to discuss the claim further. A conference was held on March 29th and the declination of the claim reaffirmed on April 1. Appeal to the Chief Personnel Officer was taken on April 4th. We do not feel that the letter of March 9th, was the equivalent of the rejection notice envisaged by Article V, and thus in our view Employees never gave the Assitant General Manager notice that his decision was rejected.

Does this failure to comply with Article V bar consideration by us of the claim on the merits"

The provisions of Article V 1(b) are:

> "(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose."

Note the clear language, "Failing to comply with this provision, the matter shall be considered closed." The Carrier did not expressly waive the requirement. Employees argue that failure of the Chief Personnel Officer to raise this point in denying the claim constituted a waiver of the Article V violation. We cannot agree. Nothing in the Article contemplates implied waiver. We dislike to dispose of any case on a technical ground, but in our judgment, we have no alternative but to dismiss the claim.

FINDINGS: That Employees failed to comply with Article V 1(b) of the 1954 Agreement and the Board has no jurisdiction over the dispute.

AWARD

Claim dismissed.

SPECIAL BOARD OF ADJUSTEMENT NO. 506

/s/ Roy R. Ray
Roy R. Ray - Chairman

/s/ D. A. Bobo
D. A. Bobo - Employee Member

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

St. Louis, Missouri
July 29, 1963
File 77-60