

AWARD NO. 8
DOCKET NO. 8
ORT CASE 3518

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 Company (Gulf District), that:

CLAIM NO. 1

1. Carrier violated Scope Rule 1 and Rule 8 (A) of the Telegraphers' Agreement when, on the 11th day of January, 1961, it caused, required or permitted Roadmaster S. G. York, an employe not covered by the Telegraphers' Agreement, to perform work of transmitting train order information over the telephone from Mart, Texas, to Train Dispatcher located at Palestine, Texas, which work is, by the Agreement, solely and exclusively reserved to employes covered by the Telegraphers' Agreement.
2. Carrier shall compensate Agent-Telegrapher O. W. Hildebrand, in accordance with Rule 8 (A) (Call Rule), for two hours at the punitive rate in accordance with the monthly rate of \$554.67 for said violation.

CLAIM NO. 2

1. Carrier violated Scope Rule 1 and Rule 8 (A) of the Telegraphers' Agreement, when, on the 12th day of January, 1961, it caused, required or permitted Roadmaster S. G. York, an employe not covered by the Telegraphers' Agreement, to perform work of transmitting train order information over the telephone from Mart, Texas, to Train Dispatcher located at Palestine, Texas, which work is, by the Agreement, solely and exclusively reserved to employes covered by the Telegraphers' Agreement.
2. Carrier shall compensate Agent-Telegrapher O. W. Hildebrand, in accordance with Rule 8 (A) (Call Rule), for two hours at the punitive rate in accordance with the monthly rate of \$554.67 for said violation.

CLAIM NO. 3

1. Carrier violated Scope Rule 1 and Rule 8 (A) of the Telegraphers' Agreement when, on the 25th day of January, 1961, it caused, required and permitted Section Foreman W. L. Westbrook, an employe not covered by the Telegraphers' Agreement, to perform work of transmitting train order information over the telephone from Crockett, Texas, to Train Dispatcher located at Palestine, Texas, which work is, by the Agreement, solely and exclusively reserved to employes covered by the Telegraphers' Agreement.
2. Carrier shall compensate Telegrapher J. D. Whitmire in accordance with Rule 8 (A) (Call Rule) for two hours at the punitive rate \$3.6350 per hour or a total of \$7.27 for said violation.

CLAIM NO. 4

1. Carrier violated Scope Rule 1 of the Telegraphers' Agreement when, on the 21st day of February, 1961, it caused, required and permitted ExaGang Foreman C. E. Thomas, an employee not under the Telegraphers' Agreement, to perform work of transmitting train order information over the telephone from Mile Post 135 to Train Dispatcher located at Palestine, Texas, which work is, by the agreement, solely and exclusively reserved to employees covered by the Telegraphers' Agreement.
2. Carrier shall compensate Telegrapher C. D. Jones, idle on rest day, in accordance with Rule 5, of the Telegraphers' Agreement at the rate of \$250.75 (\$2.5075) per hour or a total of \$20.03 for eight (8) hours account ExaGang Foreman Thomas opening a telegraph office at Mile Post 135 to transmit this information.

CLAIM NO. 5

1. Carrier violated Scope Rule 1 and Rule 5 (a) of the Telegraphers' Agreement when, on the 14th day of March, 1961, it caused, required and permitted Section Foreman, an employee not covered by the Agreement, to perform work of transmitting train order information over the telephone from Mile Post 142, Ft. Worth Subdivision, to Train Dispatcher J. E. Carlson, located at Palestine, Texas, which work is, by the Agreement, solely and exclusively reserved to employees covered by the Telegraphers' Agreement.
2. Carrier shall compensate Telegrapher C. D. Jones, idle on rest day, 8 hours at pro rata rate of \$2.5075 per hour for this violation.

CLAIM NO. 6

1. Carrier violated Scope Rule 1 and Rule 5 (a) of the Telegraphers' Agreement when, on the 29th day of March, 1961, it caused, required and permitted Roadmaster S. G. York, an employee not covered by the Agreement, to perform work of transmitting train order information over the telephone from Mile Post 189, Pole 22, Ft. Worth Subdivision, to Train Dispatcher located at Palestine, Texas, which work is, by the Agreement, solely and exclusively reserved to employees covered by the Telegraphers' Agreement.
2. Carrier shall compensate Telegrapher C. D. Jones, idle on rest day, 8 hours at pro rata rate of \$2.5075 per hour for this violation.

CLAIM NO. 7

1. Carrier violated Scope Rule 1 and Rule 5 (a) of the Telegraphers' Agreement when, on the 29th day of March, 1961, it caused, required and permitted Roadmaster S. G. York, an employee not covered by the Agreement, to perform work of transmitting train order information over the telephone from Mile Post 219, Ft. Worth Subdivision, to Train Dispatcher A. R. Tabor, located at Palestine, Texas, which work is, by the Agreement, solely and exclusively reserved to employees covered by the Telegraphers' Agreement.

2. Carrier shall compensate Telegrapher E. E. Davis, idle extra employe, 8 hours pro rata rate at the prevailing Telegraphers' rate for this violation."

OPINION OF BOARD:

The seven claims in this dispute arose out of telephone calls made by the roadmaster, section foreman and extra gang foreman from various points on the line of road to the train dispatcher at Palestine, Texas. On each occasion the called requested the dispatcher to issue a slow order, change a slow order or take up a slow order.

Employees contend that this work belongs to the Telegraphers and they charge that Carrier violated Rule 1 (Scope Rule) when it permitted employees not covered by the Telegraphers' Agreement to perform this work. As to Claims 1, 2, and 3 they also contend that Rule 5 (a) (Basic Day Rule) was violated. Employees argue that when the dispatcher receives a message on the placing or annulling of a slow order, as in this case, it affects the movement of trains; and that by tradition, custom and practice, transmission of messages affecting the movement of trains is work belonging to the Telegraphers. They rely on various Awards, including Award 17 of Special Board of Adjustment No. 117.

Although Carrier denies that the work in question is of a kind reserved to telegraphers, it asserts at the outset that the claims are barred by the failure of Employees to comply with Article V 1 (b) of the 1954 National Agreement. In appealing from the decision of the Superintendent to the next level Employees failed to notify the Superintendent in writing that his decision was rejected.

Article V 1 (b) reads in part:

"If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within sixty 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. . ." (Emphasis added.)

Employees assert that the General Chairman's letter of March 14, 1961, was, in effect, a rejection notice as to Claim No. 1. We do not so regard it. The General Chairman took issue with the Superintendent's view as to "slow orders," and requested a reconsideration by him. On March 23, 1961, the Superintendent again declined the claim, and the General Chairman appealed on March 28, 1961, to the Assistant General Manager.

The language of Article V 1 (b) is clear that "the matter shall be considered closed." But Employees argue that the failure of the Assistant General Manager to raise this point in denying the claim amounted to a waiver of the notice provision in Article V. We do not agree. Nothing in the Article contemplates implied waiver. Here it was raised by the Chief Personnel Officer in denying the claim. Employees contend that for many years following the 1954 Agreement, Carrier did not raise this argument in the processing of appeals and

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that a policy developed of not giving the Superintendent a rejection notice. In view of this, it is argued that Carrier should now be estopped to assert the requirement in this case. We reject this argument on the ground that the failure of Carrier to take advantage of the procedural requirement in other cases can have no effect on its right to rely upon it in this case. While we are reluctant to dispose of claims on any basis other than the merits, in our judgment we have no alternative here but to dismiss the claims.

FINDINGS:

That Employes failed to comply with Article V 1 (b) of the 1954 Agreement and the Board has no jurisdiction over these claims.

AWARD

Claims dismissed.

SPECIAL BOARD OF ADJUSTMENT NO. 506

/s/ Roy R. Ray

Roy R. Ray - Chairman

/s/ D. A. Bobo

D. A. Bobo - Employe Member

/s/ G. W. Johnson

G. W. Johnson - Carrier Member

St. Louis, Missouri

July 29, 1963

Files 279-148, 152, 158, 159, 165, 166, 177