

MAY 8 1964

SPECIAL BOARD OF ADJUSTMENT NO. 525

AWARD NO. 27

CASE NO. 27

GRAND DIV.: ORT 3694

ORGANIZATION FILE:

R-1285

CARRIER FILE:

TE-6-62

EMPLOYEES' STATEMENT OF CLAIM:

1. Carrier violated the terms of an agreement between the parties hereto when it required or permitted employees not covered by said agreement to handle train orders at Paonia, Colorado, on November 20 and 29, and on December 1, 6, 8 and 13, 1961.

2. Carrier shall because of the violation set out in paragraph one hereof, compensate Agent-Telegrapher R. S. Tyson, regularly assigned at Paonia, Colorado, a call for each of the dates hereinabove set forth.

SPECIFIC FINDINGS:

Under authority of train order No. 5, in typical case cited, Extra 5111-5902 east departs Grand Junction on November 20, operating over the Montrose and North Fork Branches to Paonia. While enroute, the train performed routine freight work at intermediate stations. On arrival at Paonia and completing its work the crew ties up. With this act, the Organization argues the train ceased to exist. The following day, after terminal switching was completed in the Paonia yards, the return trip was made as Number 5902-5111. The entire movement was made under the single train order given to the conductor at the inception of the round trip by the same crew. It was copied by the telegraph operator at Grand Junction and was received from its dispatcher.

It is the Organization's theory that we are concerned with two trains; that to defeat the overtime and call rules, Carrier issued a train order at Grand Junction to one train to be delivered to another

train at Paonia thereby depriving the agent-telegrapher at Paonia of his contractual right to handle (receive, copy and deliver) train orders for trains originating at his station after his tour of duty. It admits that the same personnel made the round trip. It cites Award 10228 in support of its position.

We must be governed by reality rather than fiction in construing labor agreements, as was Referee Ray in Award 10228, and Referee Sheridan in Award 10418, under similar circumstances.

As was stated in Special Board of Adjustment No. 506, Telegraphers - Mo.-Pac. R. Co. (Ray):

"Essentially the question at issue here is: Did persons outside the Agreement perform telegrapher's work? We think not. In this case a telegrapher performed all the work to which the craft was entitled. He copied the train order and delivered it to the train crew at Bloomington. The train crew performed no work belonging to telegraphers. They did not accept the order for delivery to another train or make delivery to any other train. In fact, they retained it for execution after they left Bay City. We decline to indulge in the fiction that the crew took delivery of the order addressed to them at Bloomington for the purpose of making a later delivery to themselves at Bay City."

While this was not a round trip move, the principle applies.

The theory advanced by the Organization in this case would seem to rest on a rule found in some Agreements, but not in the D. & R. G. W. R., reading:

"At points where telegraphers are employed and train orders and/or clearance cards are delivered by one train to another at such location, employes shall be paid a call as provided in Rule"

Even where such rule was involved, it has been held that such a rule refers to circumstances where one train meets or overtakes another train and not to round trips by the same crew, such as we are confronted with here. (Award 10418).

We find nothing in the applicable Agreement fixing the time and place for issuing train orders or clearance cards.

AWARD

Claims denied.

SPECIAL BOARD OF ADJUSTMENT NO. 525

Denver, Colorado  
March 12, 1964

(Signed) J. Glenn Donaldson  
J. Glenn Donaldson, Neutral Member  
Chairman

(Signed) R. K. Anthis  
R. K. Anthis, Organization Member

(Signed) C. E. Baldrige  
C. E. Baldrige, Carrier Member