Award No. 2147
Docket No. TE-1966

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Chicago, Burlington & Quincy Railroad,

(1) That the Carrier violated the provisions of the Telegraphers' Agreement as amended by Mediation Agreement A-546 of January 1, 1939, by requiring or permitting the conductor of freight train extra 5122 south, an employe not under the Telegraphers' Agreement, to copy train order No. 217, at Forman, Illinois, a point where there is no telegrapher employed, on November 6, 1940, which violative act in effect opened a temporary train order office at Forman and denied the performance of this work to an employe carried on the Telegraphers' seniority list: and

(2) That the senior, extra employe on that senioeity district, idle on November 6, 1940, be paid a day's pay of eight hours at seventy cents (70¢) an hour, which, as the employe entitled to perform such service, he would have earned had he been used therefor.

POSITION OF EMPLOYES ON JURISDICTION: The Carrier first raises the question of the right of this Third Division of the Adjustment Board to assume jurisdiction and decide a dispute involving a violation of the Mediation Agreement A-546 on the grounds that under the provisions of Section 5, Second, of the Railway Labor Act the National Mediation Board only may interpret the meaning or application of Mediation Agreement A-546, which was entered into by the Carrier and its employes through the services of the National Mediation Board.

We disagree with the motion and argument of the Carrier to dismiss the proceedings in this case on those grounds. We argue that Mediation Agreement A-546 supplemented and amended the prevailing telegraphers' contract of agreement as of its effective date, January 1, 1939, the rules of which became a part of the telegraphers' agreement and thereafter governed the performance of work covered by the telegraphers' agreement and obligates the Carrier to observe in connection with the other rules of the telegraphers' agreement. The instant case in dispute involves a violation of the clear terms of the Mediation Agreement and requires no interpretation of its *meaning or application, and, therefore, is not a matter coming within* the jurisdiction of the National Mediation Board. The violative action of the Carrier with respect to Mediation Agreement A-546 is a matter incidental or corollary thereto which has arisen by virtue of the agreement and as such gives jurisdiction to this Third Division of the Adjustment Board to hear and decide the dispute in the instant case.

The foregoing discussion of Rule 21 is only for the purpose of more clearly pointing out to the Third Division that the instant dispute turns entirely upon the provisions of Mediation Agreement A-546 and that this rule affords the claimant no standing before the Adjustment Board. To further bear out this contention **it must be kept in mind that there has been no operator employed at Forman, Illinois, since October 22, 1932.** Thus premised, and to determine to what extent restrictions had been imposed with respect to other than operators handling train orders before the effective date of Mediation Agreement A-546, we must look to the schedule agreement. The only schedule provision having relevancy to this particular feature is Rule 5, which reads:

> "No employe other than covered by this schedule and train dispatchers **will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located,** except in an emergency, in which case the telegrapher will be paid for the call." (Emphasis supplied.)

From this it will be seen that there were no restrictions as to the handling of train orders by other than operators at points where operators were not employed, until the advent of the aforementioned Mediation Agreement, and **no operator has been employed at Foreman since October 22, 1932.** Thus it is shown by a superabundance of incontrovertible evidence that this alleged dispute has no standing under the schedule agreement. The point at issue is resolved to one question and one question alone—which is—does Mediation Agreement A-546 contain a penalty provision? Under the provisions of Section 5, Second, of the Railway Labor Act as amended, that question, arising as it does from an agreement which was negotiated with the assistance and under the auspices of the National Mediation Board, is referable to no other tribunal for interpretation.

The defendant Carrier, therefore, respectfully urges that this proceeding be dismissed for lack of jurisdiction.

OPINION OF BOARD: The only question presented for determination is whether this Division has jurisdiction to determine this dispute. The claim is based upon an alleged violation of a provision contained in Mediation Agreement A-546 executed December 8, 1938 by the carrier on the one hand and the representatives of six groups of its employes (among which was the Order of Railroad Telegraphers) on the other.

The provision of the Mediation Agreement upon which claimants rely reads as follows:

> "(2) At points where there is no telegrapher employed, train and engine service employes will not be required nor permitted to block trains; and, other than as provided for in Rule 54 of Conductors' and Trainmen's schedules, will not be required or permitted to copy train orders except in emergency."

The claim is predicated upon the assumption that Mediation Agreement A-546 is supplemental to and in amendment of the current agreement between the carrier and the telegraphers effective September 1, 1927.

The carrier challenges this assumption, taking the position that the Mediation Agreement can become a part of the current agreement only by specific declaration to that effect. We do not think this position is tenable. Where parties to a contract subsequently enter into another contract concerning the same subject matter the two contracts must be read together in order to ascertain the rights and obligations of the parties with respect to the subject matter. Although customary it is unnecessary to refer specifically to the first contract in the second. The rights and obligations of the parties are to be gathered from both.

In Awards Nos. 1220, 1221, 1222, 1223, 1224 and 1225 this Division assumed jurisdiction of claims arising under a mediation agreement (very similar to this) in which no mention was made of the current agreement.

The carrier further contends that this Division cannot assume jurisdiction of the instant dispute because the rights of other groups of employes signatory to the mediation agreement are involved. Several of these groups, of course, cannot be made parties because, under the Railway Labor Act, their disputes are committed to the jurisdiction of the First Division. The answer to this contention would seem to be that this Division did actually assume jurisdiction under almost identical circumstances in the above mentioned awards. (See also Award No. 2045 where the carrier made a similar contention.) Furthermore if the contention were granted validity it would leave claimants under a multi-party mediation agreement without a forum for redress. For, by the same token, the First Division would have no jurisdiction because disputes arising between the Telegraphers and the Carriers are committed to the jurisdiction of the Third Division.

The alternative says the carrier is to go back to the Mediation Board pursuant to Section 5, Second, of the Railway Labor Act, which provides:

> "In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this Act, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days."

Clearly this section endows the Mediation Board with power only to interpret mediation agreements. It has no power to enforce them. The Mediation Board itself has made this distinction clear. In a pamphlet issued in 1940 referring to Section 5, Second, it said:

> "In keeping with this section the Board, therefore, when called upon, may consider only the specific terms of an agreement actually signed in mediation, not matters incidental or corollary thereto. This restriction upon the Mediation Board's interpretative duties is necessary in order that there may be no confusion between its responsibilities and those of the National Railroad Adjustment Board, or any other adjustment board upon which the Railway Labor Act imposed the duty of determining the proper meaning or application of individual rules and regulations composing such labor agreements."

To sustain the carrier's contention here would leave multi-party mediation agreements without force or substance.

There can be no doubt that the National Railroad Adjustment Board has jurisdiction of claims arising under multi-party mediation agreements; and that the proper Division will assume jurisdiction where the claim is based upon a plain and unambiguous provision of such agreement. Fourth Division Award No. 77, Third Division Awards Nos. 854, 871, 1151, 1220, 1221, 1222, 1223, 1224, 1225, 2045.

The provision of Mediation Agreement A-546 upon which this claim is based is plain and unambiguous. The claim alleges a specific violation of it. The claimants seek redress through interpretation which we have here decided lies with the Adjustment Board.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934; and

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein.

AWARD

This Division has jurisdiction of the claim.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 9th day of April, 1943.