

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, 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 and permitting the engineman of freight train No. 75, an employe not under the Telegraphers' Agreement, to copy train order No. 121 at Island Park, Iowa, a point where no telegrapher is employed, on December 17, 1940, which violative act in effect opened a temporary train order office at Island Park 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 Seniority District, idle on December 17, 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.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date September 1, 1927, as to rules of working conditions as amended by Mediation Agreement A-546 of January 1, 1939, and August 1, 1937, as to rates of pay is in effect between the parties to this dispute.

On December 17, 1940, upon the arrival of freight train No. 75 at Island Park, Iowa, a point where no telegrapher is employed, the engineman of the train called the dispatcher from this point on the dispatcher's telephone and was given train order No. 121 addressed to C. & E. No. 75, which he copied, reading as follows:

"No. 75 has right over first 20, Island Park to Council Bluffs."

This train order was issued over the signature of Superintendent C. J. Connett, and was made "Complete" at 9:26 A.M. On receipt and delivery of this train order by the engineman of train No. 75, this train proceeded to Council Bluffs.

POSITION OF EMPLOYES: Mediation Agreement A-546 of January 1, 1939, an amendment of the current Telegraphers' Agreement of September 1, 1927, provides as follows:

"MEDIATION AGREEMENT

It is mutually agreed that the dispute, National Mediation Board Case A-546, jointly submitted to mediation by representatives of The Chicago, Burlington & Quincy Railroad Company, Brotherhood of

(2) the fact that Mediation Agreement A-546 contains no compensatory provision nor disciplinary provision to apply in event of violative acts; these two factors are so closely related they cannot be disassociated;

(3) the Management's letter of December 15, 1938 to the Company officers concerned (Exhibit No. 2) to see that copy of Mediation Agreement A-546 be placed in the hands of each engineer, fireman, conductor, brakeman, telegrapher and dispatcher before its effective date with request that each paste his copy in his schedule so it will not be lost or destroyed;

(4) the **settlements** in letters of November 7, 1934, January 14, 1935, June 4, 1934 and February 23, 1935, (Exhibits Nos. 3, 4, 5 and 6) **evidencing accepted application of the schedule agreement** in cases wherein conductors copy train orders;

(5) the fact that the parties to Mediation Agreement A-546 relied upon cooperation and good faith to effect the essential force and substance to the agreement;

(6) the purpose of the Mediation Agreement was accomplished in that the "practice" complained of was eliminated by it;

(7) the fact that rule 21 provides for compensation to telegraphers only while traveling to and from and while performing duties at temporary offices, opened because of emergencies; not to "idle" telegraphers; and

(8) the fact that evidence referred to herein and made a part of this case, was not present in awards cited by the employees.

The evidence indicates beyond question of doubt that the agreements cited do not call for any payment to be made under the circumstances. Therefore, it must be decided that the claim for a day's pay in behalf of the senior extra, idle telegrapher is denied.

OPINION OF BOARD: This dispute is governed by the Opinion filed in Docket TE-1966, Award 2312.

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

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

That the Carrier violated Mediation Agreement A-546.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of September, 1943.