

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
(Edward F. Carter, Referee)

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY**

(Joseph B. Fleming and Aaron Colnon, Trustees)

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers, Chicago, Rock Island and Pacific Railway, that Telegrapher A. J. Spaete, Inman, Kansas, is entitled to two calls as follows: (1) One call because on March 30, 1941, while he was off duty, Train Order No. 287 was sent from Hutchinson in care of train second No. 90 and delivered to Extra 5024 West at Inman; (2) One call because on April 22, 1941, while he was off duty, train Order No. 203 was sent from Hutchinson in care of No. 14 and delivered to Extra 2606 West at Inman, to avoid payment of overtime due Telegrapher Spaete under the agreement.

EMPLOYES' STATEMENT OF FACTS: There is an agreement bearing date January 1, 1928, covering rules of working conditions and rates of pay in effect between the parties to this dispute.

Telegrapher A. J. Spaete is the regularly assigned Agent-Telegrapher at Inman, Kansas, with assigned hours 8 A. M. to 5 P. M., daily, except Sundays, one hour allowed for meals, where he performs the duties pertaining to the operation of a one-man station, including the handling of train orders and other telegraphic and telephonic communications during his tour of duty.

On March 30, 1941, Train Order No. 287 was issued by the Carrier to the Telegrapher at Hutchinson, Kansas, addressed to "C. & E. Extra 5024 West at Inman Care Second 90," and forwarded by the train crew of Second 90 from Hutchinson to Inman, and there delivered to the train crew of Extra 5024 West, at a time when Telegrapher Spaete was off duty.

On April 22, 1941, Train Order No. 203 was issued by the Carrier to the Telegrapher at Hutchinson, Kansas, addressed to "C. & E. Extra 5023 East Hutchinson and Extra 2606 West at Inman c/o No. 14," and forwarded by the train crew of No. 14 from Hutchinson to Inman, and there delivered to the train crew of Extra 2606 West, at a time when Telegrapher Spaete was off duty.

Because of this improper handling and the encroachment upon the rights granted under the agreement, the Committee, through its Local Chairman, submitted claim for two calls in behalf of Telegrapher Spaete, because he was not privileged to perform the work of handling the orders in question at his station.

The Superintendent denied the claim, and appeals were taken to higher officers who sustained the decision of the Superintendent.

POSITION OF EMPLOYES: The rules of the agreement invoked in this dispute are:

intent and purpose, as well as the proper application of a rule—a complete and full understanding acquiesced in by both parties. From some source and in some manner the representatives of the organization decided to place upon this particular rule an entirely new and different construction of its proper application and interpretation, disregarding all of the history of the negotiations and records over a period of some twenty-eight (28) years, disregarding the actual practice followed and disregarding the total and complete absence of any similar request in the past. He now comes to this Board asking for support of his recent and new, as well as different, interpretation of a rule. Not a rule in the Telegraphers' Agreement on the Rock Island Railroad, even though it has been in the working rules agreement between the Telegraphers and this Carrier since November 1, 1903, the date of the first working rules agreement with the Telegraphers, and has been uniformly applied and followed throughout the entire period up to this date, can safely be accepted by the Carrier as actually constituting an agreement between the Telegraphers' Organization and the Carrier if such rules are subject to change in interpretation without change in the language of the rule, or if a request for a change in the application of the rule may be submitted to this Board and such new and completely different interpretation upheld.

OPINION OF BOARD: In all essential features this dispute is identical with that presented in Docket No. TE-2932, Award No. 2926. For the reasons stated in that award, the claim in the instant case is sustained.

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 Employees involved in this dispute are respectively carrier and employes 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 the current Agreement as alleged by Claimant.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of June, 1945.

Dissent to Award 2926, Docket TE-2932
Dissent to Award 2927, Docket TE-2933
Dissent to Award 2928, Docket TE-2934
Dissent to Award 2929, Docket TE-2935
Dissent to Award 2930, Docket TE-2936

Dissent filed to Award 1713 reflects our position then and now with respect to the provisions of Article 1(b), in substance the same as Article XIII, there involved.

(s) C. P. Dugan
(s) R. F. Ray
(s) A. H. Jones
(s) R. H. Allison
(s) C. C. Cook