

Award No. 2930
Docket No. TE-2936

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 F. E. Stevens, Shamrock, Texas, shall be paid under the rules of the Telegraphers' Agreement two calls as follows:

(1) One call on June 2, 1942, at a time when he was off duty, train order No. 572 was handled by the crew of train Second 991 from Sayre Yard to Shamrock and there left in the waybill box to be later picked up by the crew of Work Extra 2614;

(2) One call on June 12, 1942, at a time when he was off duty train order No. 518 was handled by the crew of train First 991 from Sayre Yard to Shamrock, and there left in the waybill box, to be later picked up by the crew of Work Extra 2614; these acts having for their purpose the avoidance of overtime payments to Telegrapher Stevens.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of January 1, 1928, as to rules of working conditions and rates of pay is in effect between the parties to this dispute. On page 39 is listed the positions of agent, not required to telegraph, and two telegraphers, subsequently reduced to one agent-telegrapher. Telegrapher F. E. Stevens is employed to fill the position of agent-telegrapher, with assigned hours 8:30 A.M. to 5:30 P.M., one hour allowed for meals, daily, including Sundays and holidays.

June 2, 1942, the Carrier issued train order No. 572 to a telegrapher at Sayre Yard at 1:47 A.M., address to "C. & E. Westward" trains. Later, while the telegrapher at Sayre Yard was preparing orders and clearance cards for delivery to train second 991 scheduled to leave his station, the Dispatcher directed that 3 copies of Order No. 572 be sent by the crew of second 991 from Sayre to Shamrock, there to be left in the waybill box to be picked up later by the crew of Work Extra 2614. The order was handled as directed and was picked up by the crew of the Work Extra at Shamrock at a time when Telegrapher Stevens was not on duty.

June 12, 1942, the Carrier issued train order No. 518 to a telegrapher at Sayre Yard at 12:55 A.M., address to "C. & E. Westward trains." Later, while the telegrapher at Sayre Yard was preparing orders and clearance cards for delivery to train First 991, scheduled to leave his station, the Dispatcher directed that 3 copies of Order No. 518 be sent by the crew of First 991 from Sayre to Shamrock, there to be placed in the waybill box to be picked up later by the crew of Work Extra 2614. The order was handled as directed and was

The carrier is firmly of the opinion that the employees have no proper basis on which to sustain a claim that the fully-understood application of Rock Island rule 1(b) should now be changed and their contention should be denied; further, in their action in withdrawing the claims covered by Dockets TE-1880, 1881, 1883 and 1884, they forfeited any right to expect that any payments would be made prior to the time they again submitted the same question to the Board, i. e., December 5, 1944.

Here we have a rather unorthodox method of procedure. We find an organization representing large number of employees that has had a contract covering working rules and rates of pay with this carrier for many, many years. All records available and every act and deed on behalf of the representatives of the organization and the representatives of the railroad company thoroughly and conclusively proved that there was a complete and thorough understanding as to the 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 the Employees involved in this dispute are respectively carrier and employees 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