Award No. 3611
Docket No. TE-3549

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, ROCK ISLAND & 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 & Pacific Railway, that Telegrapher F. L. Oney be paid a call because train orders taken by him while on duty at Manhattan, Kansas, August 16, 1941, to be delivered to work extra 2226 at that point several hours after he went off duty, were, on instructions of his superior, not delivered by him but were placed in a waybill box on the outside of the station building to be picked up by the train crew addressed.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of January 1, 1928, is in effect between the parties to this dispute, covering rules of working conditions and rates of pay, copy of which is on file with this Board.

Manhattan, Kansas, is located on Subdivision 37 of the Missouri-Kansas Division, Chicago, Rock Island and Pacific Railway Company at which point the carrier maintains an agent-telegraph position with hours 10:00 A.M. to 6:00 P.M.; and one telegraph position with assigned hours 7:00 P.M. to 3:00 A.M., including Sundays and holidays. Both tricks handle train orders and are covered by the agreement with the telegraphers.

On August 16, 1941, before going off duty, Mr. F. L. Oney, second shift telegrapher at Manhattan, received train orders and clearance card from the dispatcher for delivery to work extra 2226 weed burner, the crew of which had instructions to commence work at 6:45 A.M.—three hours and forty-five minutes after his tour of duty ended, and three hours and fifteen minutes before the agent-telegrapher was due to begin his day's work—neither of which were called to deliver the orders to the train crew—and was instructed to place such train orders and clearance card, which were received by him during his regular shift, in a waybill box on the outside of the station building to be picked up by the crew of this train before commencing work.

Work extra 2226 was employed in the vicinity of Manhattan on the day previous to the date of this claim, and tied up at Manhattan that night.

POSITION OF EMPLOYES: The following articles of the prevailing Telegraphers' Agreement which we employ in this case provides:

> was negotiated, i.e., that the phrase 'handle train orders' referred to the 'copying' of train orders, and that understanding continued until the employes, because of awards issued by your Board, sought to secure a new interpretation of the rule so it would apply in a manner which they well knew was not intended when the rule was made in 1913."

which the employes on page 3 of their letter April 14, 1945 (Dockets TE-2932 to 2936), say "cannot be supported by facts nor any competent evidence."

We ask your Board to deny this claim, first on the basis that the employes cannot expect to be heard in a claim which they have failed to prosecute after withdrawal from your Board, in a period of four years, and, second, we ask that on the merits of the case your Board reconsider the decision made in your Awards 2926 to 2930, inclusive, taking cognizance of the very clear record in those cases which shows an undisputed recognized application of the rules in the Rock Island telegraphers' schedule for a period of more than forty years and find that the carrier's actions are in harmony with the rules.

OPINION OF BOARD: This opinion applies to Dockets TE-3549, TE-3550, TE-3551, and TE-3552. In so far as the merits of these disputes are concerned, the issues have been decided adversely to the carrier in awards involving these same parties. Awards 2926, 2927, 2928, 2929 and 2930. We feel bound by these awards, and numerous other awards involving the same issue but relating to other carriers. See memorandum to Award 1680.

It appears that these disputes were progressed to this Board in 1942, and in October, 1942, they were withdrawn from the Board's consideration at the request of the petitioner. Following its practice the Board entered awards dismissing the proceedings, but not purporting to pass upon the merits of the various claims. Awards 2019, 2020, 2021 and 2022. It further appears that carrier was advised when these claims were withdrawn from the Board that the claims were "still alive," and were withdrawn because of "conditions on Division Three as affecting our organization." We quote portions on a letter addressed to carrier on October 27, 1842, by the General Chairman:

> "Since you are fully acquainted with the conditions on Division Three as affecting our organization, and know the circumstances leading up to the withdrawal of these and a number of other cases, it would merely mean a repetition to restate them here."
>
> "This letter will be our notice to you that the claims covered by the above dockets and all other pending claims are still alive; and regardless of how you unilaterally accept the withdrawal of these cases, it will in no way affect our actions in relation to those herein mentioned ,those now pending, or any further claims of similar nature. Our committee is still contending that the basis of these claims is proper. Therefore, it is our intention to prosecute any future claims on the same basis, if the cause to do so arises."

In view of this letter it cannot be held that carrier has been misled by a withdrawal of these claims. No basis for an estoppel exists. The claims were never passed upon on their merits. We find nothing in the Railway Labor Act which prohibits this Board from considering withdrawn claims which are subsequently presented for decision on the merits.

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 parties waived oral hearings thereon;

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;

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

That the agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 17th day of July, 1947.

DISSENT TO AWARD 3611, DOCKET TE-3549
DISSTNT TO AWARD 3612, DOCKET TE-3550
DISSENT TO AWARD 3613, DOCKET TE-3551
DISSENT TO AWARD 3614, DOCKET TE-3552

These four disputes are sustained on the grounds that the issues have been decided adversely to the carrier in Awards 2926, 2927, 2928, 2929 and 2930, involving these same parties. Dissents were filed to these awards as follows:

> "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."

and are equally applicable to the awards here involved.

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