

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 J. D. Foreman, Turon, Kansas, is entitled to a call because on March 18, 1941, while he was off duty, train order No. 218 was sent from Langdon in care of the crew of train No. 91 for delivery to train No. 2nd 92 at his station, to avoid payment of this overtime.

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

J. D. Foreman, the agent-telegrapher at Turon, Kansas, with assigned hours 7:00 A.M. to 4:00 P.M., daily except Sundays and holidays, with one hour meal period, at which station he performs all the duties pertaining to the operation of a one-man station, including the handling of train orders and other telegraphic and telephonic service during his regular shift.

On March 18, 1941, train order No. 218 was originally transmitted by the train dispatcher to a telegrapher at Langdon, Kansas, addressed to "No. 91 at Langdon and 2nd, 92 at Turon care No. 91"; forwarded by and delivered by train crew of No. 91 to the train crew of 2nd 92 at Turon at a time the office at Turon is closed.

POSITION OF EMPLOYES: The rules of the agreement relied upon by the committee are:

Scope

"The following rules and rates of pay will govern the employment of telegraphers, telephone operators (except switchboard operators), agents, agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators and staff men employed upon the lines of these railways as shown in this schedule and are herein referred to as telegraphers."

Article 1-(b)

HANDLING TRAIN ORDERS: "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, can be promptly located and is available, except in an emergency, in which case the telegrapher will be notified and paid for the call." (Emphasis ours.)

Until recently a case came up on the Second district where the crew made no effort to call the operator as per agreement, and when the operator made claim for the call it was refused and, although it was claimed this action was taken to avoid delay to a fast passenger train, the call was refused on the basis the operator performed no service.

This is a matter that should be handled the same on the entire system, and if such exceptions to the agreement is made for the reason stated in this case, we claim that past practice should apply in all such cases and that the operator be allowed the call, whether he is called or not, as he is required to be available for service.

Please set me hear from you on this subject.

Yours truly,

/s/ W. T. BROWN,
General Chairman."

We call the Board's attention to the underlined paragraph, clearly upholding our contention that "handle train orders" was as early as 1914 interpreted by the organization as "securing entrance to telegraph office and handled (transmitted or received or copied) their own orders."

This letter was not quoted as a part of our submissions in Awards 2926 to 2930, inclusive, but is competent and definite proof of our statement on page 3 of our oral argument in Docket TE-2932 to 2936 (Awards 2926 to 2930), reading:

"With no showing by the employees that this long established practice and operation under the railroad rules was or has been resisted by them since the adoption of Article 1 (b) conclusively proves that both parties had a like understanding of the rule at the time it was negotiated, i.e., that the phrase 'handle train orders' referred to the 'copying' of train orders, and that understanding continued until the employees, 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 employees 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 employees 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: See Opinion in Docket TE-3549, Award 3611.

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 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 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
DISSENT 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