

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO, INDIANAPOLIS & LOUISVILLE
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Indianapolis and Louisville Railway that,

1. The Carrier violated the provisions of Memorandum of Agreement between the parties dated July 15, 1944, when the Carrier required or permitted the conductor in charge of Extra 525 to receive verbal instructions in lieu of a train order at Diamond, Indiana, by telephone at 10:02 A. M., December 5, 1947; and,
2. That the Carrier by this violative action established in fact a telephone office at Diamond, Indiana, under the Telegraphers' Agreement, and violated the terms of the Telegraphers' Agreement by requiring or permitting an employe not covered by said agreement to perform work covered by the agreement, thereby depriving the senior idle extra telegrapher of a day's pay; and,
3. That the senior extra telegrapher, idle on December 5, 1947, be compensated for the day's work of which he was thus deprived.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of July 1, 1929, is in effect between the parties to this dispute. Memorandum of Agreement dated July 15, 1944, between the Carrier and its employes represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Brotherhood of Railroad Trainmen, and The Order of Railroad Telegraphers is also in effect.

At 10:02 A. M., December 5, 1947, Conductor Cooper, in charge of stone train, Extra 525, reported by telephone to the train dispatcher that his train was ready to leave Diamond, but that he did not have enough time on Train No. 75 to move against that train. The train dispatcher then called the agent-telegrapher at Clear Creek and instructed him to hold No. 75 until the arrival of Extra 525. Upon the authority of these verbal instructions Extra 525 moved from Diamond to Clear Creek, a distance of 2.2 miles, on the main track at a time when No. 75, a superior train, was overdue. The verbal instructions in lieu of a train order, by which this movement was accomplished, constituted a violation of the agreement because no emergency as defined in the Memorandum of Agreement existed.

The Claim was presented to the Carrier by the General Chairman in the usual manner on December 8, 1947, and was further handled in the usual

Since Mr. Whitehouse has become General Chairman for the Telegraphers on the C. I. & L. Ry. he has taken the position that awards rendered on other railroads apply on this property without regard to the rules in effect on this property, and without regard to the long established accepted interpretation and application of the rules in effect on this property. We are advised that the instant claim, claims that have been submitted to the Board and claims that have not been submitted to the Board are filed "in a bona fide attempt to improve the relations between the carrier and the telegraphers by securing compliance with the agreement". The carrier has been and is complying with the agreement. In order to further "improve the relations between the carrier and the telegraphers" it would be necessary to in all cases comply with the demand of the General Chairman by paying all claims presented by him, without regard to the merits of the claim and regardless of whether the claims are legitimate under the rules.

THE CARRIER HOLDS:

1. The current agreement and the memorandum of agreement dated July 15, 1944, were not violated.
2. A telegraph office was not established at Diamond on December 5, 1947, or at any time prior to or subsequent to this date.
3. There is no rule or other agreement that prevents the Carrier from handling the stone train, in the manner it was handled in the instant claim.
4. Stone trains in the territory involved in the instant case have always been handled in this manner.
5. The crew did not receive verbal instructions in lieu of a train order.
6. The organization is requesting a new rule.

(Exhibits not reproduced.)

OPINION OF BOARD: The factual details pertaining to this Claim are in sharp conflict but we think the record supports the following conclusion: On December 5, 1947, a brakeman on an extra train that had been operating over a branch telephoned from a station on the main line at which no operator was stationed to the agent-operator at another station 2.2 miles away and asked him to hold a regular train until the extra could move between the two stations. The agent-operator thereupon pulled the board to red against the regular train and the extra proceeded to move over the main track between said stations. The Carrier concedes that the movement was arranged by the brakeman and the agent-operator by means of a telephone conversation.

The Petitioner contends that what was done was a violation of a Memorandum Agreement, dated July 15, 1944. Section 1 of that instrument, among other things, prohibits operators from giving verbal or telephone instructions in lieu of train orders to train or engine service employees except in cases of emergency. It was not established that there was any emergency here and, in our judgment, the action of the agent-operator in granting the request of the brakeman amounted to a verbal or telephoned train order for the extra to move over the main track between stations, in violation of said Memorandum. The Carrier discusses at length its right, under certain situations, to move an extra train over a main line under flag protection, but we do not find that this is what occurred here.

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 Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of January, 1949.