

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**THIRD DIVISION**

**Edward F. Carter, 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 the Carrier violated the terms of the Telegraphers' Agreement and the Memorandum of Agreement dated July 15, 1944, when, at 7:40 P. M., May 28, 1948, a train service employe was required or permitted to receive, by telephone direct from the dispatcher, verbal instructions in lieu of a train order, and to transmit items of record by telephone direct to the dispatcher, at Bedford, Indiana, when no telegrapher was on duty at that point; and that the first trick telegrapher at Bedford, Indiana, be compensated for a call in accordance with the terms of the Telegraphers' Agreement.

**EMPLOYES' STATEMENT OF FACTS:** An agreement bearing effective date of July 1, 1929, was in effect between the parties to this dispute at the time the dispute arose. 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 or about 2:28 P. M., May 28, 1948, the following telegram, signed by the Division Trainmaster (Chief Dispatcher) was transmitted to the employes concerned at McDoel and Bedford, Indiana:

"McDoel DH pilot and crew to Bedford on No. 5 today to bring Eng 229 to McDoel at 10:30 P. M."

At 7:40 P. M., May 28th, shortly after train No. 5 reached Bedford, a member of the crew which deadheaded to that point in accordance with instructions contained in the above quoted telegram communicated with the dispatcher by telephone as follows:

Asked for and received authority to place a flag on train No. 70 to protect the movement of engine 229 from Bedford to McDoel.

Asked for and received information as to the meeting point between trains No. 70 and No. 73, also instructed by dispatcher not to delay No. 73.

Transmitted items of record, consisting of the names of crew members and time on duty. This information is a required part of the dispatchers' train sheet records.

**OPINION OF BOARD:** The record shows that on May 28, 1948, the Carrier directed a crew of employees to deadhead from McDoel to Bedford, Indiana, to bring Engine 229 back to McDoel at 10:30 P. M. of said day. Shortly after the crew reached Bedford, the dispatcher instructed a member of the crew to place a flag on Train 70 to protect the movement of Engine 229, gave instructions concerning the meeting point of Trains 70 and 73, and instructed them not to delay Train 73. It is also claimed that the names of the crew members and their time on duty was given to the dispatcher. This enabled the crew to leave with Engine 229 at 7:40 P. M. instead of 10:30 P. M. as previously directed. The Organization contends that this was a violation of the Memorandum of Agreement effective July 15, 1944, particularly paragraph 1 thereof which states:

"IT IS AGREED THAT, effective July 15, 1944, train and engine service employees will not, except in case of emergency, be required or permitted to copy, or train dispatchers or operators be required or permitted to telephone direct to train and engine service employees, train orders (Forms 19 and 31) Clearances (Form A), or verbal instructions in lieu thereof, or take messages of record over the telephone."

The Carrier denies that the dispatcher ever gave any such directions to a member of the crew at Bedford. The evidence shows the General Chairman heard the instructions given over the telephone. While the Carrier asserts that the dispatcher gave no instructions by telephone to a crew member at Bedford, it does not unequivocally deny that such instructions were not given someone authorized to do so. The violation would be as great if the instructions were relayed through a telegraph operator at McDoel to a member of the crew at Bedford. We think the direct evidence produced and a consideration of all the circumstances surrounding the case establish that such instructions were given by telephone in violation of the quoted paragraph of the Memorandum of Agreement.

The Carrier contends that the claim is required to be personally made by the Claimant under Rule 4H and that a claim made by the Organization on Claimant's behalf is an ineffectual attempt to enforce the Agreement. Rule 4H reads:

"All grievances which may exist shall be taken up with the proper officials of the company in writing within thirty (30) days by the aggrieved."

Assuming, but not deciding, that Rule 4H has application to the claim here made, the interpretation placed upon it by the Carrier cannot be sustained. The words, "by the aggrieved", when given their usual and ordinary construction, do not mean that the aggrieved must act personally to secure compliance with the rule. Such expressions as "by the claimant", "by the accused" or "by the aggrieved" mean that the act shall be performed by the person injured, his agent, attorney, or other personal representative. To hold here that the words "by the aggrieved" meant that Claimant and Claimant alone could prosecute the claim would require a strict and strained construction not usually called for and certainly not intended by the parties when the agreement was made.

An affirmative award is required.

**FINDINGS:** The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 Memorandum of Agreement effective July 15, 1944, was violated as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 12th day of July, 1949.