

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Edward F. Carter, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE COLORADO AND SOUTHERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Colorado and Southern Railway Company, that

(1) The Carrier violated the provisions of the Telegraphers' Agreement as amended by Mediation Agreement A-1562 of July 9, 1944, by requiring and/or permitting a train or engine service employe not under the Telegraphers' Agreement, to copy train order No. 29 at Grenville, New Mexico, a point where there was no telegrapher employed, on June 6, 1946, which violative act in effect opened a temporary train order office at Grenville and denied the performance of this work to an employe carried on the Telegraphers' seniority list; and that

(2) The senior idle employe on the Southern Division be paid a day's pay of eight (8) hours at the pro rata rate of pay on June 6, 1946, which, as the employe entitled to perform such service, he would have earned had he been used therefor.

**EMPLOYEES' STATEMENT OF FACTS:** Grenville, New Mexico is located on the Southern Division of the Colorado and Southern Railway Company where a so-called custodian or caretaker is employed.

At 4:08 P.M. June 6, 1946, said custodian was instructed by the train dispatcher to have the engineer of Extra 910 South come to the telephone upon arrival at that station; this was done and at 4:21 P.M. Engineer McIntosh of Extra 910 South copied the following train order in violation of Mediation Agreement Case NMB A-1562:

"Order No. 29 June 6, 1946, to C&E Extra 910 South at Grenville — Order No. 24 is annulled. Extra 914 North meet Extra 910 South at Mt. Dora. Extra 914 North take siding at Mt. Dora — Signed W.P.W., Complete to Engineer McIntosh at 4:21 P.M.".

**POSITION OF EMPLOYEES:** There is an agreement bearing date of June 16, 1924, governing rules of working conditions and rates of pay in effect between the parties to this dispute, also Mediation Agreement A-1562, dated July 9, 1944, copies of which have been furnished to the members of this Board.

Grenville is located on the main line of the Colorado and Southern Railway Company between Trinidad, Colorado and Clayton, New Mexico where an Agent-Telegrapher was employed for many years continuously until March 27, 1942, at which time the position was discontinued but not, in fact, abolished. At

Grenville is not a telegraph office. There was only a custodian employed at that station. In order to avoid a serious delay to Extra 910 South and in order to avoid this crew tying up under the Federal Hours of Service law before reaching Texline terminal, the train dispatcher had the custodian inform the engine crew, on arrival of Extra 910 South, to call the dispatcher. The engineer copied a train order at 4:21 p.m., which permitted this train to proceed and meet Extra 914 North at Mount Dora. At that time the crew had been on duty 14 hours and 31 minutes.

Extra 910 South reached Texline terminal just prior to the expiration of the 16-hour time limit on duty and tied up in the yard. There was not sufficient time remaining to permit the crew to even take the engine to the enginehouse.

If the engineer of Extra 910 South had not been requested to copy this train order, this crew would have tied up on the line under the Hours of Service law and would have resulted in serious delay to the train. Therefore there was an emergency.

When this claim was first presented to us it was presented for a day's pay for the nearest operator, Mr. B. Lovin, who was assigned at Mount Dora. This operator was on duty at that time and copying an order for Extra 914 North and, of course, could not have been available under any circumstances at Grenville. Later, the claim was presented for the senior idle employee. On this date there were no extra employees available. All of them were in service. In discussing this claim with the General Chairman he contended that former Agent McDonald, who was assigned at Des Moines, New Mexico, but who was off on his rest day, was idle. We disagreed with this. Former Agent McDonald was not idle but was off on his rest day and therefore was not available for call. Furthermore, this employe has resigned from our service and is no longer employed by the Colorado and Southern.

This claim should be denied in view of the emergency and there was no extra employe who could have been used as they were all employed at that time. Furthermore, an employe off on his rest day cannot be considered as an idle employe and available for emergency work unless he is so notified before he is released for his rest day.

**OPINION OF BOARD:** The record shows that Grenville, New Mexico, is a small station in charge of a custodian. On June 6, 1946, the custodian was instructed by the train dispatcher to have the engineer of Extra 910 South call him by telephone upon arrival. Pursuant thereto the engineer called the dispatcher and received a train order from him. The Organization contends that this was a violation the Telegraphers' Agreement.

The copying of a train order by an engineer by telephone with the train dispatcher is clearly a violation of the Telegrapher's Agreement. Awards 1220, 4516. The Carrier's contention that an emergency existed and thereby justified the handling of the train order cannot be sustained. Emergencies which justify such handling of train orders are defined in Mediation Agreement Case NMB A-1562. An examination of the Agreement there mediated conclusively establishes that no emergency existed which authorized the handling of the train order by the engineer.

Carrier contends that there was no telegrapher available to perform the work of handling the train order. The record shows that a telegrapher off duty on his rest day could have been called. This is all that is required as a basis for claim. The fact that this telegrapher may have subsequently left the service of the Carrier is not pertinent to the issue. An affirmative award is in order.

**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 Employees involved in this dispute are respectively carrier and empolyes 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: A. I. Tummon  
Acting Secretary

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