

Award No. 6240
Docket No. TE-6324

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Spokane, Portland & Seattle Railway System Lines, the Oregon Trunk Railway, a subsidiary, that:

(1) the Carrier violated the provisions of the prevailing agreement and Memorandum of Agreement dated February 12, 1942, between the parties, when and because on September 12, 1950, it required the conductor of Work Extra Locomotive crane X-24 to handle train orders by telephone at Sherar, Oregon, a point where no telegrapher is employed, which is tantamount to the establishment of a temporary telegraph train order office at that point and;

(2) as a result of this violation, Carrier shall by appropriate award and order be required to compensate extra telegrapher Harry E. Schatz an amount equal to one day's pay of eight (8) hours.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties bearing date of March 1, 1946, concerning rates of pay, rules and working conditions, copies of which are on file with the Board. In addition thereto the parties have subscribed to the following Memorandum of Agreement mutually designated as Appendix "A":

"MEMORANDUM OF AGREEMENT

Between

Spokane, Portland & Seattle Railway Company
System Lines

and

Order of Railroad Telegraphers
Brotherhood of Locomotive Engineers
Brotherhood of Locomotive Firemen and Enginemen
Order of Railway Conductors
Brotherhood of Railroad Trainmen

(1) It is hereby agreed that train and engine service employees will not be required to call the dispatcher for the purpose of receiving orders governing the movement of trains and that train and engine service employees will neither be required nor permitted to copy train orders governing the movement of trains, other than in emergencies as herein defined.

opinion that an emergency did not exist, then the Organization is privileged to proceed as outlined in its letter January 10, 1951 or as it may otherwise desire in accordance with provisions of the Railway Labor Act.

Very truly yours,

/s/ E. B. STANTON
Vice President & General Manager"

As stated in Carrier's Statement of Facts, Claimant Harry E. Schatz was on the extra list at Portland, Oregon, September 12, 1950 and was available for call. The only way in which claimant could have been made available to take the three train orders issued to the Conductor of Work Extra 24 at Sherar at 8:25 A.M., 8:30 A.M., and 8:41 A.M. of that date would have been for him to have departed from Portland, Oregon on Passenger Train No. 4 at 9:00 P.M., September 11, 1950. He would have arrived at Wishram, Washington at 12:05 A.M., September 12, 1950, departed on Train No. 102 at 12:30 A.M. and would have arrived at Sherar at 2:09 A.M. In other words, if claimant had been given the usual preparatory time of one hour, thirty minutes, when placing such a call, the S. P. & S. dispatcher as well as the G. N. dispatcher at Klamath Falls would have to have anticipated the connection at Bend, Oregon some eleven hours thirty minutes prior to the time the S. P. & S. dispatcher was advised of this connection at 7:00 A.M., September 12, 1950. This, of course, was an impossibility.

It is the Carrier's position that an emergency existed as contemplated in Appendix "A" as this connection could not be anticipated by the S. P. & S. dispatcher in sufficient time to make the claimant available to handle the train orders issued at Sherar. The claimant's representative was requested to advise the Carrier in what manner claimant could have been made available to accept the orders at Sherar at the time they were issued and he, of course, could not explain under what circumstances he could have been made available but simply took the position that no emergency existed as contemplated in Appendix "A" and claimed a violation of the Scope Rule of the agreement. The Carrier contends there is no justification for such a position being taken by the employes as Appendix "A" clearly contemplates the propriety of issuing train orders under circumstances where emergencies exist and such emergencies are not limited to those stated in Appendix "A". There is no violation of the agreement in issuing the train orders in this instance for reasons outlined and payment of claim should be declined.

The Carrier affirmatively states that all data contained herein has been made known to or discussed with the representatives of the employes.

(Exhibits not reproduced).

OPINION OF BOARD: Work Extra 24, which was a self-propelled locomotive crane, used in work train service, departed from Maupin prior to 7:00 A.M. for service on the line between Wishram and Bend. Shortly thereafter the dispatcher at Portland received advice that the Great Northern would deliver a freight train to Carrier at Bend for movement to Wishram. As a result, it became necessary to send a freight extra with light engine from Wishram to Bend to provide power and crew for the Great Northern train, and thereafter to run the train back from Bend to Wishram. To protect these runs provisions had to be made to move both through the working limits of Work Extra 24 and instruction was sent by messenger to the conductor of the Work Extra to call the dispatcher at Portland, who thereupon gave him three train orders by telephone: One covering the light movement from Wishram to Bend; another covering the freight movement from Bend to Wishram, and the third covering another freight extra not explained in the record.

As Carrier admits in the record: "Stated as briefly as possible, the validity of this claim depends upon whether or not an emergency existed as

contemplated in Memorandum of Agreement quoted as Appendix A in the Carrier's Statement of Facts." The memorandum so referred to defines "emergency" as follows:

"(2) Emergencies as herein defined shall include conditions resulting from causes such as casualties or accidents, engines or equipment failures, wrecks, broken rails, obstructions to tracks, washouts, tornadoes, storms, high water, and slides, or unusual delays due to hot boxes or break-in-two that could not have been anticipated by the dispatcher before train departed from last previous train order office which would result in serious delay to traffic."

As so defined, the word "emergency" is restricted in meaning, not only to causes "that could not have been anticipated by the dispatcher," as to which in the situation before us the record is not clear, but also to causes such as are therein specifically enumerated. The words "such as" must be construed as meaning that other causes might be included than those specifically named, but only other causes of a similar sort. Each of the named causes has to do with what we would generally call accidents, except for the word "casualty", and even that word generally means injury or death by accident. All have to do with unexpected and unfortunate injury to and failure of physical plant, equipment or personnel. By no stretch of definition could the arrival of freight for movement over a connecting line be classed with such misfortunes. Even if so, there is no showing that the third train order copied by the conductor had any connection whatever with the unexpected extra freight movement.

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

That the parties to this dispute waived oral hearing 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

Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of June, 1953.