

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**H. Raymond Cluster, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**GULF, MOBILE AND OHIO RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad, that:

(1) The Carrier violated the provisions of the Agreement between the parties when on July 14, 1951, it required or permitted an employe not covered by the scope of the agreement to transmit by the use of the telephone a communication of record at West Point, Mississippi.

(2) In consequence of this violation the Carrier shall be required to pay Marilyn Lummus for one "call" under the provisions of Article 4-e of the agreement.

**EMPLOYEES' STATEMENT OF FACTS:** There is in effect an agreement between the parties to this dispute bearing effective date of March 1, 1929 the Supplement thereto bearing date July 21, 1949, copies of which are on file with this Board.

At 5:31 p. m. on July 14, 1951, at West Point, Mississippi, Section Foreman J. R. Savage by using the dispatcher's telephone at West Point, transmitted to the operator at Artesia, Mississippi, the following:

"West Point, Miss.  
July 14, 1951

S. W.  
Meridian

Have all trains reduce speed to five miles per hour over I. C. crossing at West Point until further notice.

J. R. Savage, S. F."

This occurred outside the regular assigned hours of the Telegrapher-Clerk who was available for call.

**POSITION OF EMPLOYEES:** Marilyn Lummus an employe holding seniority under the rules of the agreement held the position of Telegrapher-Clerk at West Point, Mississippi, assigned hours 8:00 a. m. to 5:00 p. m. with

"If such service is performed at other points by employees not covered by this agreement, the senior idle employee (extra employee preferred) shall be notified and paid a minimum of one day's pay for each violation.

"If instructed by train dispatcher, or other authority, to clear train or trains before going off duty, leaving clearance card or orders in some specified place for those to whom addressed, employee shall be paid a call as provided in Rule 7 for each train cleared.

(b) "Nothing in this rule shall be construed as preventing the train dispatcher from transmitting train orders, provided such train orders are handled between the train dispatcher and an employee covered by this agreement."

Had the Employees' proposed change in the Agreement been agreed to, it would possibly lend some color to the claim, but this is not true. The Employees' proposed change was not agreed to.

The Agreement between the parties to this dispute was before this Board for review in Award 4280, decided January 21, 1949. That case involved a claim that a Telegrapher should be paid a call because a Conductor telephoned an Assistant Chief Dispatcher and informed the Assistant Chief Dispatcher that he had two cars in his train without waybills. In commenting on the applicability of Rule 1 (c) of the Agreement, the Board in part stated:

"It will be borne in mind that all telephone communications between railroad employees are not subject to the Telegraphers' Agreement. It would be beyond all reason to say that it was intended that an instrument of common convenience and general usage, such as the telephone has become, was to be used exclusively by one class of employees."

This Board, composed of experienced Railroad men, should take cognizance of the fact that not only Employees of the Railroad notify authorities when conditions of the track, such as broken rails, are discovered, but it is also common knowledge that other persons, not Employees of the Railroad, have on numerous occasions notified the Railroad authorities of various conditions that affect the safe movement of trains. Such helpful warning from the public is encouraged by Carriers and is expected from their Employees.

For the reasons herein set forth, the Carrier respectfully requests that this claim be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** At approximately 5:30 P. M. on Saturday, July 14, 1951, the Illinois Central Section Foreman at West Point, Mississippi, called the G. M. & O. Section Foreman and told him that a broken rail had been found in the GM&O—I. C. crossing at West Point. According to Carrier, the GM&O Foreman immediately telephoned the GM&O Train Dispatcher, gave him this information and asked him to have all trains reduce speed over the crossing to five miles-per-hour until repairs were made. According to Petitioner, the Foreman did not call the dispatcher directly, but called the operator at Artesia and requested him to transmit the following telegram to the dispatcher: "Have all trains reduce speed to five miles per hour over I. C. crossing at West Point until further notice."

In either case, the claim is that the Foreman's call was a violation of the Agreement because it was telegrapher work under the scope rule, and Claimant, who held the position of Telegrapher-Clerk at West Point, 8 A. M.-5 P. M., Monday-Friday, was entitled to a call to perform this service on Saturday.

Carrier contends that the claim should be dismissed because of the long delay between the final decision on the property and the submission of the case to the Board. In addition, on the merits, Carrier raises various defenses based upon the nature of the work involved, the availability of Claimant and the existence of an emergency.

We do not believe in this case that the claim should be dismissed on the procedural ground urged by Carrier. On the merits, Article 1 (c) of the Agreement between the parties is controlling. It reads:

"No employees, other than those covered by this agreement and train dispatchers, shall be required or permitted to do telegraphing or telephoning in connection with the movement of trains, except in bona fide emergency cases."

We think that the receipt of a telephone call by the Section Foreman that there was a broken rail in the crossing clearly constituted a bona fide emergency case within the meaning of Article 1 (c) so as to permit him to make the disputed call. Petitioner argued in support of the claim that the record does not show that the break was in the GM&O track rather than in the I. C. track, that there was immediate danger to GM&O trains or GM&O personnel, or that any repairs were to be undertaken immediately, thus endangering any personnel of either railroad. Therefore, it is contended, Carrier has not shown that an emergency existed at the time of the disputed call. We cannot agree. Carrier states, and it is uncontroverted in the record, that the Foreman made the call immediately upon receipt of the information that the rail was broken. Whatever later investigation may have shown as to the details of the break, the information that there was a break in the crossing required the emergency action of immediately slowing down all trains. In order to accomplish this emergency action, the Foreman called the operator or dispatcher—it doesn't matter which—as permitted by the specific exception in Article 1 (c).

In view of our disposition of the claim on the basis that an emergency existed, we find it unnecessary to make findings on the various other contentions made by the parties.

**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 Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1957.