

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE TEXAS AND PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Texas & Pacific Railway, that:

1. The Carrier violated the Agreement between the parties on the dates and at the times herein below stated when it permitted or required members of train crews to receive, copy and handle train orders by the use of the radio telephone on trains between stations where no telegrapher is presently assigned:

Order No.	Date	Time	Train	Location
215	5-15-53	3:42 am	Ex 1556W	Near Cisco
1	10-22-53	12:23 am	Ex 1526W	Near Pete
10	12-31-53	1:01 am	Ex 1577W	Between Baird & Clyde
11	12-31-53	5:36 am	Ex 1575W	Near Morita
12	12-31-53	5:38 am	Ex 1575W	Near Morita
12	1-14-54	1:54 am	Ex 1531W	Between Baird & Abilene
81	1-26-54	9:03 pm	Ex 1508E	Near Jayell
10	2-10-54	1:36 am	Ex 1544E	Between Baird & Cisco
57	2-21-54	10:13 am	Ex 1546W	Near Clyde
119	3- 4-54	11:03 pm	Ex 1562W	Near Berlo
12	3-12-54	1:50 am	Ex 1533W	Between Baird & Clyde
5	4- 2-54	12:39 am	Ex 1557W	Between Baird & Clyde
31	4- 4-54	9:25 am	Ex 1568W	Between Baird & Clyde
9	4- 7-54	2:35 am	Ex 1554E	Near Clyde
5	4- 8-54	12:30 am	Ex 1544E	Between Baird & Jayell
9	4-10-54	1:44 am	Ex 1518W	Between Baird & Abilene
8	4-11-54	1:40 am	Ex 1544E	Between Baird & Cisco
25	4-16-54	2:45 am	Ex 1570E	Between Baird & Putnam
44	4-17-54	9:33 am	Ex 1557W	Between Baird & Clyde

2. As a consequence of these violations the Carrier shall compensate the senior idle telegrapher, extra in preference, on the district involved, an amount equivalent to one day's pay at the straight

time minimum hourly rate, for each of the dates stipulated in Part 1 hereof.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement bearing effective date of May 15, 1950, between the Texas & Pacific Railway Company and The Order of Railroad Telegraphers. Said agreement is by reference made a part hereof.

The dispute involves interpretation of the Agreement with respect to the handling, copying and delivering of train orders on trains on various dates and at various times by train service employees. The Statement of Claim names specific dates, however, the Employees are reasonably certain that the claim does not include each and every violation which has occurred between the time of the first and last dates shown. Those listed are the violations which have been brought to the attention of the Organization's officers.

In the early part of 1952, or thereabouts, the Carrier completed the installation of radio telephone transmitting and receiving instruments on freight engines, in cabooses, and in some selected stations which, the employees were informed, were for the purpose of enabling the engineer and conductor to communicate with each other, and to permit in certain specific instances, communication between trains and stations. It was the definite understanding that it was not the purpose of the Carrier to use these radio telephones for the purpose of transmitting and receiving orders, messages, and/or reports of record.

In spite of this understanding, the Carrier in 1952, issued through its Division Superintendents the following General Orders:

"THE TEXAS & PACIFIC RAILWAY COMPANY

Office of Superintendent

Western Division

GENERAL ORDER NUMBER 44

Big Spring, June 25, 1952

572-06

"ALL CONCERNED:

The use of radio communication in any manner by any employee to supersede the requirement of complying with any rule of the Uniform Code of Operating Rules, Supplements thereto, or Special Instructions Supplementing Uniform Code of Operating Rules, is prohibited.

The use of radio communication to transmit train orders, or any part of contents of train orders, is prohibited except as follows:

(1) Train dispatcher may transmit a train order by use of radio communication direct to an operator, or direct to a conductor or engineer as provided in Rule 206 (b).

(2) Radio communication may be used by an operator to relay train orders direct to a conductor, an engineer or another operator as provided in Rule 206 (c).

/s/ W. C. Foster
Superintendent

cc: LCP (2) RCP CFA WTF WFK
MRB JGT ACL LRS JHW JAW
RTS GWS RLR RLM JWM

POST ALL GENERAL ORDER BOOKS"

agreements, to be handled by employees we represent and that they be permitted to perform it, and furthermore that positions be established on trains operating in C.T.C. territory and where, on trains, radio or other means of communication are used or may be used manned by employees covered by our agreement."

Could anything be any plainer? They say they want operators on all trains. Radios are standard equipment on our trains. They want operators on the trains or the radios removed therefrom. The Carrier's reply to their letter is attached as Exhibit B. In that letter we said "* * * which is not understood as a proposal to change the terms of existing agreement". And they have never yet transformed their "declaration of policy" into a request or proposal, formal or otherwise. They are making the same attempt here that they made in Award No. 6959. They are trying to get your Board to give them a rule, which is outside your legal authority, in preference to serving a valid notice under Section 6 of the Railway Labor Act and following the prescribed procedure thereunder. You have said in hundreds of awards, including Award No. 6959, that you will not assume the functions properly delegated to the National Mediation Board by the Railway Labor Act. We respectfully urge that you must not assume those functions here.

In Award No. 6959, we conclusively proved the past and present practice on this property. We proved it by seventy-odd statements from a cross-section of employees and officers of the Company. The Board referred thereto in its Findings in that award, and since it is a matter of record, we shall not burden your board with a repetition of it here.

In summary, we feel that we have shown the following:

1. The "claims" are not properly before your Board.
2. There is no rule to support the Organization's position.
3. The Organization's purpose is to induce your Board to write a rule into the agreement.
4. The Organization's contention is specifically denied by Award No. 6959, a recent award on this property involving the same parties.

We respectfully submit that these alleged claims must be dismissed or denied.

It is affirmed that all data submitted herein in support of the Carrier's position has heretofore been presented to the Organization and is hereby made a part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The Record in this case does not contain sufficient factual data to enable the Division to make an intelligent award. Further, some of the statements of fact in the respective submissions are at variance with each other. Therefore, the Division has no recourse but to dismiss the Claim, without prejudice to the rights of either party.

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

That the parties waived hearing on this dispute; and

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 Claim should be dismissed in accordance with the Opinion.

AWARD

Claim dismissed in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1957.