

Award No. 10536
Docket No. TE-9321

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert J. Ables, Referee

PARTIES TO DISPUTE:

CHICAGO GREAT WESTERN RAILWAY COMPANY

THE ORDER OF RAILROAD TELEGRAPHERS

STATEMENT OF CLAIM: (32) Carrier's file 0-239. Claim No. B-6 by the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway that:

(a) The Carrier violated the Agreement between the parties when on September 5, 1955, (Labor Day) it required or permitted the Conductor of Train No. 192 to call Dispatcher and get line up of trains and to get permission to go down, i.e., permission to enter IC tracks from the Operator on duty at East Cabin; and then declined to allow Telegrapher L. S. Hickie eight hours pay at the time and one-half rate to which he was entitled to for work performed on his position during his regular hours on a Holiday. This claim is based upon, but not necessarily confined to, that Rules 1, 4, 16, Addendum 3, Rule 8 were violated. While Mr. Michels reports no record of No. 192 calling dispatchers or necessity of same, our records show that the Conductor reported to Train Dispatcher that his train arrived Fair Ground at 5:20 A.M. with 154 loads, 18 empties, 9190 tons and would depart with 141 loads, 14 empties, 8310 tons and asked Dispatcher to ring IC Operator East Cabin for permission to proceed to the IC tracks and which is incidental to that so that his train could proceed through the city of Dubuque. That work is historically that of the Telegrapher on duty. First trick Fair Ground (Dubuque) was blanked on a Holiday in violation to the bulletin or work requirements of the position. The above evidence outlines some of the work performed by persons outside the agreement on that day. And that:

(b) The Carrier shall now compensate L. S. Hickie in the amount of eight hours pay at the time and one-half rate for this work he was deprived of.

EMPLOYEES' STATEMENT OF FACTS and POSITION OF EMPLOYEES:

The above Carrier described cases are not ready for consideration and action by your Board. They are a group of unsettled disputes involving this Carrier and this Organization which have not been handled to conclusion on the property and the right of this Organization to endeavor to settle them by further negotiations or by means other than National Railroad Adjustment Board pursuant to Article V, Section 5, of the Agreement of August 21, 1954, has been challenged by the Carrier in the Courts.

failure it is the Carrier's position and evidence is conclusive that the claim herein is now barred by the terms of Article 5 of the August 21, 1954 Agreement, and is null and void. The Third Division, National Railroad Adjustment Board, is, accordingly, requested to so find and deny the payment of this claim.

Exhibit "A" is attached hereto and made a part hereof as if fully set forth herein.

The Carrier affirms that all data in support of its position has been presented to the other party and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: There are two principal issues in this case. The first is whether the claim is stale for not having been referred to this Board within applicable time limits; and the second is whether, under disputed facts, the Telegraphers' Agreement has been violated because a conductor, on a holiday when an operator's position was blanked, reported his train to the train dispatcher and acted as a block operator when he requested the dispatcher to call another telegrapher for permission to enter a block.

For the reasons contained in Award No. 10534 the Carrier's contention that the claim is barred for not having been appealed within applicable time limits is not sustained. For the reasons contained in this opinion the Employees' claim that the Telegraphers' Agreement was violated is sustained.

The facts are in dispute. The Employees maintain that on a holiday the Carrier blanked the operator's position but nevertheless performed work properly belonging to the operator at that station when a conductor reported (OS-ed) his train to the train dispatcher by telephone and, in addition, requested the dispatcher to call the telegrapher at East Cabin to secure permission for his train to enter the block. The Carrier maintains that there is no record of such OS report or of the communication by the conductor to secure permission to enter the block. It notes, however, that the information on the location of the train was actually recorded on a train sheet from the conductor's Train Delay Report which was filed in the telegraph office at Chicago upon the train's arrival and subsequently transmitted by the telegrapher at that terminal to the train dispatcher, in the customary manner.

The dispute as to the facts points up the difficulty in deciding the rights and obligations of the parties where the circumstances upon which the decision is to be based must be gleaned from unsworn allegations of those parties. However, the Employees major contentions on the facts will be accepted principally because the Carrier does not deny what has been stated to be the case but merely states that there is no record of such communications.

The Employees' contention that the Agreement was violated when the conductor reported to the dispatcher on the arrival and departure time of his train and the number of loads and empties and tonnage cannot be sustained for the reason that Addendum No. 3, applicable to this case, states—

"It is understood and agreed that:

- (a) telephone conversation to give or receive information about work, and
- (b) telephone conversation to give or receive information about the arrival of trains and * * *

will not be construed as a violation of this agreement."

Since the conductor's report was informational in character it falls within the exceptions in Addendum No. 3 and the communications involved, accordingly, did not violate the Agreement.

The telephone call from the conductor to the dispatcher asking him to call the telegrapher at East Cabin for permission to enter the block did violate the Agreement.

Carrier maintains that there was no necessity for the conductor to obtain this permission since the train movements involved were governed solely by signal indication, and no train orders, messages, block cards, etc. were required. However this may be, if the conductor did in fact communicate with the dispatcher to arrange for this permission (and from the available facts it is accepted that he did), it makes no difference whether he was required to have this authority or not. As the person in charge of the train, the conductor may ask for traffic information whenever he finds it necessary. The fact that he requested this information implies that he found it necessary to have it. Accordingly, the communication should be regarded as one of record. The only remaining consideration is whether this communication violated the Agreement. Addendum No. 3 again applies.

Carrier argues that the only restriction imposed by Addendum No. 3 is in connection with train and/or engine service employees calling "dispatchers" on the telephone. Although the Carrier does not concede that the basic communication took place, it argues that assuming it did there is no violation of the Agreement here because the conductor called the "telegrapher" at East Cabin and that this is not in violation of the Agreement.

If such were the facts we would agree with the Carrier on the grounds discussed in Award No. 10535, but the facts we have adopted here are that the conductor called the "dispatcher" with the request to call the telegrapher at East Cabin. Under these circumstances, there was a violation of the provision in Addendum No. 3 which limits a train service employee from calling a dispatcher in connection with a train movement or to take train orders.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of April 1962.