

Award No. 10699

Docket No. TE-9677

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chesapeake and Ohio Railway that:

1. Carrier violated the Agreement between the parties when, at Mt. Sterling, Kentucky, on May 22, 1956, it required or permitted an engineer, an employe not covered by the Agreement, to handle a Form CJ-85.
2. Carrier shall now compensate W. A. Parsons, regularly assigned operator at Mt. Sterling, in the amount of a minimum call in accordance with Rule 27(b) of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Agreements between the parties are available to your Board and by this reference are made a part hereof.

Mt. Sterling, Kentucky, is a station located on the Lexington Subdivision of the Carrier, thirty three miles east of Lexington, Kentucky. At the time cause for this claim arose, there were two positions under the Telegraphers' Agreement at this station. One was that of agent not performing any communications work, which since that time has been reclassified to agent-operator. We are not here concerned with that position. The other position of operator was a seven day position with assigned hours 5:45 A. M. to 2:45 P. M. (one hour meal period). Claimant Parsons was regularly assigned to the position of operator at Mt. Sterling.

Mt. Sterling is located in single track automatic block territory. At the east end of the passing track or siding, there is an automatic block signal governing the movement of eastward trains; this is an "absolute" block signal which means that when it has a red aspect indicating stop, a train cannot pass this signal until authorized by the train dispatcher, except in case of communication failure when the train may proceed with flag protection.

Commencing with the installation of automatic block signals many years ago, when a train encountered a red absolute block signal, a train order

The Board will see that adoption of the contention of the Employees in this case could result in nothing but confusion as pointed out by the Third Division in Award 4050.

As shown above, the National Railroad Adjustment Board has held in numerous cases that for telephoning to belong exclusively to telegraphers such telephoning must constitute bona fide telegrams, orders, or reports of record.

The Carrier has shown in detail above that the telephoning complained of in this case was not of record nor was there a requirement by the Railway Company that it be of record. Conversely, the instruction printed on Form CJ-85 used for obtaining permission to proceed in accordance with the Carrier's Operating Rules, specifically state that the permission will be received from the operator verbally.

As shown by the Carrier, the telephoning involved in this case was not of the nature as to be reserved exclusively to telegraphers, but was the handling of verbal permission in connection with train operation such as is carried out hundreds of times daily on any railroad.

Claim should, therefore, be denied.

All data submitted have been discussed in conference or by correspondence with the employee representatives in the handling of this case.

(Exhibits not reproduced.)

OPINION OF BOARD: Mt. Sterling, Kentucky, is a station in the Lexington Subdivision of the Carrier. W. A. Parsons was a regularly assigned operator at that point. It is located in single track automatic block territory — there is an absolute block signal located there. At 3:30 P. M. on May 22, 1956, Extra 6042 East encountered a red absolute block signal at the East Switch of Mt. Sterling. The Train Dispatcher issued Form CJ-85, authorizing the train to proceed in accordance with Operating Rule 509A. Parsons was off duty at the time but was nearby and available.

It is the contention of the Claimant Parsons that Form CJ-85 is a train order, that, though he was off duty, he was actually at the station at Mt. Sterling, nearby and available and should have been called to receive Form CJ-85 but was not called, in violation of the Scope rule and Rule 58; that he should be compensated for a minimum call in accordance with Rule 27(b) of the Agreement.

It is the position of the Carrier that the signal at the east end of Mt. Sterling showed "Stop" indication which made it necessary for the crew

to call an operator on a block-phone to secure permission to proceed. Engineer Holder called the operator at Preston who received Form CJ-85 from the Dispatcher and verbally advised the engineer to proceed per 509; the engineer did not copy the form; it is the contention of the Carrier that Form CJ-85 is not a train order, that the use of the telephone under the circumstances did not constitute a violation of the Scope rule.

It cannot be said that Form CJ-85 has the formal appearance of a train order, however, we must look beyond the form to its substance in ascertaining whether or not by its issuance the Carrier intended to accomplish the same purpose as by a formal train order: If so, it should be regarded and construed as a train order. As was stated in Award 10435 (Miller) — "It seems to be a more sound approach to consider a communication of this type in the light of two of its functional importance rather than in the perspective of technical nomenclature."

In reviewing Form CJ-85, as a part of it we find the following: "**Record of Train** authorized to Pass Stop Indication as Prescribed by Rule 509 (emphasis ours) . . . No. of Train authorized to proceed . . . Instructions issued to proceed . . . Train dispatcher and operator must fill in this form for each train before authorizing train to proceed . . . This form will not be delivered to train or engine crews, and must be preserved and forwarded to the Superintendent."

There is every indication from the language used in Form CJ-85, as connotated above, that it is a communication of record involving a train movement. The receipt of the communication at Mt. Sterling was work belonging to the operator employed there, and whether the information that enabled the train to proceed through the block signal was transmitted to the train by a telegrapher at another point by a manual delivery system, or by direct telephone communication with the engineer of the train requiring the information, makes no difference in so far as the violation of the Agreement, a contractual obligation, is concerned.

See Award 10435 (Miller) Award 10534 (Ables).

It is undisputed that if there has been a violation Rule 27(b) applies.

FINDINGS: The Third Division of the adjustment Board, after giving the parties to this dispute the 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 has been 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 July 1962.