

Award No. 10801
Docket No. TE-10058

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Harold Kramer, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Burlington and Quincy Railroad, that:

1. The Carrier violated the Agreement between the parties when it required or permitted employees not covered by said Agreement to handle (receive, copy and deliver) train orders at Trevino, Wisconsin.

2. Carrier shall compensate the senior idle employe, extra in preference on the seniority district, in the amount of a day's pay at the temporary office rate on November 9, 1956 and January 26, 1957.

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

Trevino, Wisconsin is a station located on the La Crosse Division of this Carrier. It was formerly an open telegraph office with positions under the Telegraphers' Agreement. The Chicago, Milwaukee, St. Paul and Pacific Railroad has arranged with this Carrier to operate trains over the CB&Q between Trevino, Wisconsin and Winona, Minnesota. The normal and usual operation is one train each way per day. Eastward CMStP&P trains enter the CB&Q main line at Trevino. On some days it is necessary that this train have a train order before it can proceed to Winona.

On November 9, 1956, Conductor Reister of the CMStP&P train handled (received, copied and delivered) the following train order:

"Train Order No. 19

Nov. 9, 1956

To C&E Extra Milw 980 East At Trevino

Two sections No. 48 November 9 St. Paul to North LaCrosse

A E S

Made Complete 119 AM

Reister Operator"

where no employe covered by the agreement is employed or was available, consequently the conditions and circumstances under which an employe might claim a penalty do not exist. Where a rule specifically provides for a penalty under certain stipulated conditions or circumstances, no other penalty under different conditions or circumstances can be presumed to be applicable. Stated differently, by agreeing upon one penalty, the parties have by agreement expressly precluded any other penalty under any other conditions or circumstances.

In conclusion, Carrier respectfully submits that:

(1) The claim for November 9, 1956 is barred by the provisions of Article V, paragraph 1(c) of the August 21, 1954 Agreement because proceedings were not instituted by Petitioner within 9 months from date of Carrier's decision.

(2) Both claims are barred under the provisions of Article 1(a) of the August 21, 1954 Agreement because no individuals have ever been named as claimants.

(3) The penalty for handling train orders by other than employes covered by the Agreement is confined, by the clear provisions of Rule 1(c), to telephone or telegraph offices where telegraphers are employed and available. Petitioner has attempted to enlarge upon the scope of Rule 1(c) through negotiation and has failed. The Board cannot present the Employees with a rule they failed to secure in negotiation.

With these facts before it, the Board must either dismiss the claim for lack of jurisdiction, or deny it in its entirety for lack of merit.

* * * * *

The Carrier affirmatively asserts that all evidence herein and herewith submitted has previously been submitted to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute in part stems from the fact that on November 9, 1956 Conductor Reister of the Chicago, Milwaukee, St. Paul and Pacific train handled (received, copied and delivered) the following train order at Trevino, Wisconsin.

"Train Order No. 19

"Nov. 9 1956

"To C&E Extra Milw 980 East At Trevino

"Two sections No. 48 November 9 St. Paul to North LaCrosse

A E S

"Made Complete 119 AM

Reister Operator."

The position of the Carrier on this matter, identified as file number 0-1034-57, is that this claim was declined by Carrier's Staff Officer G. M. Youhn, the highest designated officer for such claims, under date of February

11, 1957. That under the Agreement of August 21, 1954, Article V, paragraph 1(c) reads in part as follows:

"All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act."

It follows then, that 9 months from February 11, 1957 does in fact expire on November 11, 1957. Nothing can alter this simple calendar calculation. It is the opinion of this Board that the Organization notice of intent to file this dispute with the Third Division had to have arrived in the office of the Executive Secretary on or before November 11, 1957 in order to comply with Article V, paragraph (c) of the Agreement and reproduced in part, above.

The position of the Organization that this is a technicality, while true, is nevertheless as binding on the parties as any other part of the Agreement. It appears that the letter of the Organization, here in question was dated in St. Louis, November 9, 1957 which was a Saturday and November 11 a holiday (Veterans Day) and therefore this letter could not have arrived prior to the expiration of the 9 month period which was on November 11, 1957.

This Board has so ruled in the past and we agree as in Award 7110 Third Division and First Division Award 14697.

On January 26, 1957 Conductor Reister, a Chicago, Milwaukee, St. Paul and Pacific train service Employe not covered by the Telegraphers Agreement and also at Trevino, Wisconsin, as in the November 9, 1956 incident was permitted, caused or required to handle (receive, copy and deliver) the following order.

Form 19

Burlington Lines

Form 19

"Train Order No. 18

Jan 26 1957

"To C&E Extra Milw 980 East at Trevino

"Two sections No. 48 Jan 26 St. Paul to North Lacrosse

"A E S

"Made Complete 855 PM

Reister Operator."

No emergency is claimed on January 26, 1957 the subject under claim in this instant.

The Carrier assigned file number 0-1052-57 to the claim which is based on the handling of the train order on January 26, 1957 by Conductor Reister.

References made to the Mediation Agreement A-546 under Rule 54 clearly refers to and is under the caption "Work, Wreck and Snow Plow Services,"

which is not involved in this instant and clearly not applicable. Under Rule 54 a violation was involved.

The position taken by the Carrier in this matter is that the claim was not handled in the "usual manner" prescribed by Article V in that Claimant was not named. Article 5, 1 (a) in part states:

"All claims or grievances must be presented in writing by or on behalf of the employe involved."

All claims must be presented in writing "on behalf of the employe involved" does not in our opinion make it mandatory that the Employe be named, it is sufficient that the Employe be readily identifiable. The description given by the Organization "the senior idle employe, extra in preference on the seniority district" does identify a specific Employe.

It is true that where the name of the Employe is given that in the event that a sustained award is granted that procedural matters are simplified. We cannot speculate on the intent of the framers of this provision. Of this we are reasonably certain, that it would have been a simple matter for the parties to have clearly spelled out that the Claimant in all disputes must be identified by name. This was not done.

It is true that a sustained claim for an Employe identified, specifically, in ways other than by name, results in the need to search the records, but we cannot deduce from this that therefore the Claimant must be identified by name, unless the Agreement specifically so requires.

This Board recognizes that conflicting opinions have been rendered on this matter. We hold with the Opinion stated in Award 10379, and 10675.

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

That the parties waived oral hearing;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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 there is a violation of this Agreement only as it relates to the claim for January 26, 1957.

AWARD

Claim sustained to the extent specified in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1962.

CARRIER MEMBERS' DISSENT TO AWARD 10801, DOCKET TE-10058

Award 10801 is in error when it announces that the claim "does identify a specific Employee." It does no such thing, as was evidenced by the Majority's inability to name such person at the time this award came up for adoption. There is no likelihood that such identity could ever be established, and it is not incumbent upon the Carrier to participate in any search therefor. This being true, the award is not subject to enforcement. See **Award 7652**.

/s/ **O. B. Sayers**
O. B. Sayers

/s/ **R. E. Black**
R. E. Black

/s/ **R. A. DeRossett**
R. A. DeRossett

/s/ **W. F. Euker**
W. F. Euker

/s/ **G. L. Naylor**
G. L. Naylor