

Award No. 11163

Docket No. TE-9693

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway that:

1. Carrier violated the agreement between the parties when it required or permitted employes not covered by the agreement to receive and copy Block Cards at Melbourne, Iowa on January 24, 1956, and at Peru, Iowa on February 10, 1956.

2. Carrier be required to compensate H. E. Williams, Agent-Telegrapher, Melbourne, Iowa, for a call on January 24, 1956 and F. E. Joiner, Agent-Telegrapher, Peru, Iowa, for a call on February 10, 1956.

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

Melbourne, Iowa, and Peru, Iowa are stations on the Eastern Division of the Carrier. At the time cause of this claim arose there was one position of Agent-Telegrapher at each of the stations. At Melbourne, the assigned hours were from 7:45 A. M. to 4:45 P. M. (one hour meal period), rest days Saturday and Sunday, position not filled on rest days. At Peru, the assigned hours were from 7:00 A. M. to 4:00 P. M. (one hour meal period), rest days Saturday and Sunday, position not filled on rest days.

At Melbourne, Iowa, on January 24, 1956 at 10:50 P. M., while the Agent-Telegrapher was off duty but nearby and available, train No. 5 encountered a red automatic block signal, the conductor received and copied a Block Card or Caution Card (Carrier's Form 11), or received instructions equivalent thereto which authorized his train to proceed past the block signal indicating stop.

At Peru, Iowa, on February 10, 1956 at 8:50 P. M. while the Agent-Telegrapher was off duty but nearby and available, train No. 6 en-

OPINION OF BOARD: The Claimant in Claim No. 1 was an Agent-Telegrapher of the Carrier at Melbourne, Iowa on his regular workday, January 24, 1956. His tour of duty was from 8:00 A. M. to 5:00 P. M. On this date South bound Passenger Train No. 5 arrived at Melbourne and found the automatic block signal in stop position. The conductor of this train contacted the operator at Marshalltown by radio and he received authority from the dispatcher permitting the train to proceed pursuant to Rule S-509.

Claim No. 2 is similar in that the original facts upon which the claim is based are similar, it involved an automatic block signal at Peru, Iowa, which stopped Northbound Passenger Train No. 6 on arrival at Peru at 8:50 P. M. on February 9, 1956. The Agent-Telegrapher at this station had terminated his tour of duty at 5:00 P. M.

After stopping, the conductor telephoned the dispatcher for authority to move. Permission to move was authorized pursuant to the provisions of Rule S-509.

The authority to move the train on both occasions was expressed on Carrier's Form 11, designated as a Caution Card and also known as a Block Card.

When an engineer is confronted with a red block signal, he must stop, the mandatory provisions of Rule S-509 compel it, and this rule is as follows:

“When a train is stopped by a stop indication it must stay until authorized to proceed, and will then proceed with Caution, or in case of failure of means of communication it may proceed when preceded by a flagman to the next signal displaying a proceed indication.”

The conductor has two alternatives when his train is confronted with a stop indication and one must be executed prior to the other, i.e., first, the train cannot move unless authorized to proceed, this authority emanates from the dispatcher, the authority for the movement of trains, the second proviso for the movement is a laborious method and it is utilized when the means of communication fail.

In the instant case, we are concerned with red block conditions when the channels of communication are open.

Therefore, we have a situation where a train is confronted with a mandatory provision of a safety rule and we can only conclude that before such movement is granted, such permission must emanate from responsible authority, the train dispatcher. When the authorization is granted, this involves the movement of a train.

The authority issued in the foregoing incident is expressed in Form 11, it is an order for a special purpose, but it involves a train movement. The function of Form 11, is to expedite the movement of a train with caution, and this order is a communication of record.

It is not the appellation delegated by the Carrier to Form 11 that controls. This was a train order issued in opposition to a mandatory Safety Rule.

There have been recent awards covering situations analogous to the facts which form the basis for the claims presented herein, see Awards 10435 (Miller), and 10699 (Hall).

We can find no valid reason for disturbing the aforementioned decisions, they sustained the claims presented therein on the functional objectives of the order rather than on the name delegated to the communication.

The Agreement has been violated and the Claimants shall be reimbursed pursuant to Rule 16.

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 has been violated.

AWARD

Claims 1 and 2 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1963.

CARRIER MEMBERS' DISSENT TO AWARD 11163 DOCKET TE-9693

Award 11163 erroneously attempts to bestow dignity on a block card by calling it a train order. As justification for this holding the majority relies on Award 10435 (Miller) — Delaware and Hudson Railroad, and Award 10699 (Hall) — Chesapeake & Ohio, deciding disputes involving the securing of a Form A Clearance Card and a Form CJ-85 respectively. Both instances arose on other railroads under different agreements and fact situations. The forms in those cases differed materially from that in the instant case, one difference being those forms specifically required the operator's signature, which was not true in this case.

Paragraph 1 of the claim involved securing block card information via radio from a telegrapher. The award in this respect is hopelessly in conflict with former Award 10535 (Ables) on the same property, construing this identical agreement. The conductor there actually copied a TRAIN ORDER from a telegrapher by telephone. In denying the claim, consideration was given the agreement and past practice. It was held

that this agreement did not prohibit conductors from obtaining train orders from a telegrapher. The restriction applied to securing train orders from the dispatcher.

In addition to obtaining information from telegrapher as opposed to the dispatcher, this information was not taken over the telephone but via radio. The Agreement contains no term "RADIO" nor any restrictions of its use.

First this award stretches the imagination beyond the breaking point to hold the block card to be a train order, then goes outside of the property to find dissimilar awards dealing with different agreements, facts and forms, and avoid a soundly reasoned opinion to the contrary construing a far more difficult fact situation in favor of the Carrier on the same property.

For these reasons we dissent.

W. M. Roberts
R. E. Black
R. A. De Rossett
W. F. Euker
G. L. Naylor