

Award No. 11298

Docket No. TE-10339

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

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

1. Carrier violated the agreement between the parties when on March 27, 1957 at Prestonburg, Kentucky it required or permitted an employe not covered by the agreement to handle (receive and copy) a Form CJ-86.

2. Carrier shall compensate H. C. Church, Agent-Operator Prestonburg, in the amount of a minimum call payment.

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

Prestonburg, Kentucky, is a station on this Carrier's line located on the Big Sandy Subdivision about 70 miles east of Ashland, Kentucky. It is a one-man station with one position of Agent-Operator under the Telegraphers' Agreement. The assigned hours of the position are 7:30 A.M. to 4:30 P.M. (one hour meal period) seven days per week with assigned rest days of Tuesday and Wednesday each week. H. C. Church is the regularly assigned occupant of a regular relief position which furnishes rest day relief on the position of Agent-Operator at Prestonburg on Tuesdays and Wednesdays. Cause for the instant claim arose on Wednesday, March 27, 1957 a day on which Claimant Church is assigned to the position.

On Wednesday, March 27, 1957, Agent-Operator Church had been released for his meal period and was off duty at 12:10 P.M., when Conductor Siler in charge of work extra 6133, by use of the telephone, called the operator at Paintsville requesting work order authority which was issued by the train dispatcher on Form CJ-86 (Example of which is attached hereto as O.R.T.

a train order. As previously set forth, the operator at Paintsville and the dispatcher used CJ-86, because they are required to do so, but it is not believed the Employees in their ex parte submission will contend the conductor actually used CJ-86 himself, because even when given such work authority face to face by an operator it is not in writing on CJ-86, but is verbal.

Thus, we have the Third Division saying in prior cases that operations in CTC territory do not require train orders. Added to this is the fact that the Carrier's rules and instructions provide for **verbal authority** in all instances. This claim, then, can be one thing only—an effort by the Employees to have the Third Division write a new rule saying that CJ-86 is a train order, so that all handling of Form CJ-86 will be considered the same as train orders and handled under Rule 58. It is plainly not the function of the Adjustment Board to write new rules. Its function is to apply rules duly negotiated by the parties. When this is done, it will be clear that Rule 58 or other rules upon which the Employees may rely have not been violated.

But to prevent anyone from getting the idea that this Carrier is resorting to an unsafe method of handling its trains, the following explanation is made: The dispatcher at all times has the work train in sight on his CTC panel, and he can tell whether it works and clears in accordance with his authority. He also takes the necessary action to block levers as a precaution in such cases as the operating rules require. Added to this is the fact that the signals themselves are automatic and would automatically stop other trains entering the same block in which the work train is working. The whole idea of authority in such cases is to insure that the **inferior work trains** do not occupy the main track so as to delay superior trains.

There is no basis in collective bargaining rules or otherwise for this claim, and it should be denied in its entirety.

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

Opportunity to file answer to ex parte submission of the employes is requested in accordance with revised procedure effective January 1, 1958.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a dispute between The Order of Railroad Telegraphers and The Chesapeake and Ohio Railway Company (Chesapeake District).

This claim arose at Prestonburg, Kentucky, a one-man station, with Agent-operator assigned 7 days per week between the hours of 7:30 A. M. and 4:30 P. M. (with one hour for lunch). The Claimant, H. C. Church, was occupant of regular assigned relief position, relieving the regular incumbent on Tuesday and Wednesday, his assigned rest days.

On March 27, 1957 (Wednesday) about 12:10 P. M., when Claimant was off for lunch period, Conductor of Work Extra 6133, by use of telephone at Prestonburg, requested operator on duty at Paintsville to secure authority and time from train dispatcher for his train to occupy the main track. The operator at Paintsville made such request of the train dispatcher and Form CJ 86 was issued.

This form, included among other things, authority to Work Extra 6133 to work on Main Track in both directions between Prestonburg and EM

Cabin from 12:10 P.M. until 12:50 P.M. and further instructed that the train "Clear at Bull Creek not later than 12:50 P.M."

The operator at Paintsville then communicated the information to the Conductor at Prestonburg, who made appropriate notes of the instructions or orders for his train.

This Division has held in Awards 10435, 10699 and 11163 that the more sound approach to a determination of the question involved here, is to consider the functional importance of the communication rather than in the "perspective of technical nomenclature." Award 10699 involved dispute between these same parties and same Agreement Rules.

That dispute concerned the handling of Form CJ-85 by Engineer of Train at Mt. Sterling, Kentucky. This form authorized the train involved to proceed in accordance with Operating Rules, notwithstanding a signal indicating stop. Although the instant dispute involves another form number, its purpose was to authorize movement of the train involved, between specified points, for a definite period of time and was handled in a similar manner. We hold Award 10699, is controlling precedent in this case. Rule 58 is applicable.

Our attention is called, however, to a material difference in facts with regard to the amount of damages. In Award 10699 claim for a call under Rule 27(b) was sustained. There the violation occurred outside the regular assigned hours at the point involved. Here the violation occurred during the meal period provided for in Rule 33. This rule provides for the payment of one hour at the time and one-half rate, if the meal period is not allowed. If the Claimant, who was available, had been held over to perform the work, this Rule would provide the amount of compensation.

We hold, therefore, that in this instance, under the facts shown herein, that Claimant is entitled to payment of one hour at the time and one-half rate.

For the foregoing reasons we find the Agreement was violated.

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 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 as set forth above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April, 1963.