

Award No. 11617
Docket No. TE-9927

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Colorado and Southern Railway, that:

1. Carrier violated the Agreement between the parties when on May 8, 1957, it permitted and required Trainmaster Bishop, an employe not covered by the Telegraphers' Agreement, to copy and handle a train order at Branson, Colorado.

2. Carrier shall now compensate Telegrapher C. A. Pope a day's pay of eight hours for work denied at Branson on May 8, 1957.

EMPLOYES' STATEMENT OF FACTS: There is an agreement in effect between the parties dated January 1, 1955. A copy of this agreement is on file with your Board and all rules contained therein are here applicable as if quoted word for word.

Branson, Colorado, is a seasonal agency position with an agent-telegrapher on duty during the months of September, October and November each year. During the other months of the year it is considered a closed station, except when there is work to be performed such as in this instant claim, when on May 8, 1957, it was used as a communication station.

On May 8, 1957, Trainmaster N. S. Bishop was in charge of (acting in capacity of Conductor and Engineer) and was operating Carrier's highway-rail automobile No. 9 on the vital main line single track of the Southern District of the Railroad. (This Mobile Vehicle operates as a train in that it requires train orders and is recorded on dispatcher's train movement sheet as a train.)

On the morning of May 8, 1957, Trainmaster Bishop contacted the Train Dispatcher by telephone, reporting the arrival of highway-railcar No. 9 at Branson. Following receipt of the report of the arrival time from the Trainmaster, the Train Dispatcher issued Train Order No. 20, which was copied by Trainmaster Bishop personally as an operator, and acted upon by him as Conductor and Engineer in the movement of highway-rail automobile No. 9 (referred to as Extra 9 North), in the following Form 19 train order:

tional facts, counter-evidence and refutatory information as it may decide are essential in interposing a general demurrer.

All data herein and herewith submitted has, in substance, been made known to the duly authorized representatives of the Employees on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: Under the terms of the Mediation Agreement of 1944 (Case NMB A-1562) in evidence here, train and engine service employees are not permitted to copy train orders except under certain specified emergency conditions, two of which are relevant:

- “(4) Unusual delays caused by engine and equipment failures, break-in-two's, hot boxes, and failure of fixed signals;
- (5) When train has been delayed by non-arrival of another train at meeting or passing point for thirty (30) minutes or more; and”

It is agreed that the Trainmaster and Superintendent who operated the rail-highway automobile involved in this case were acting as train service employees and that the vehicle may properly be treated as a “train” operating under train orders.

On claim date a trainmaster and a superintendent operated a combination rail-highway automobile on an inspection trip from Folsom north to Trinidad, Colorado, a distance of some seventy miles. The automobile was designated “Extra 9 North” and its movements were governed by Train Order No. 11, which also applied to an opposing, southbound train identified as “Extra 821 South.” The latter was the “superior” train and, as such, was ordered to wait at four named stations until a stated time for the arrival of the rail-highway car.

The rail-highway car arrived at Branson, Colorado, where no telegrapher was employed, at about 9:35 A. M. There it was delayed for more than thirty minutes waiting the arrival of a roadmaster and a maintenance engineer from the south. At about 10:10 A. M., the trainmaster telephoned the Train Dispatcher, who issued another train order (No. 20) to both trains which, in effect, added thirty-five minutes to the waiting time of Extra 821 south at each of three locations. Train Order 20 was received and copied by the Trainmaster, and, as a result, this claim was filed.

The issue under these facts is whether exceptions (4) and (5) of the aforesaid Mediation Agreement apply. It is not one of first impression on this property. In 1951 the Board, with Referee Wyckoff participating, rendered Award 5282, where, under similar facts, the same parties and the identical issue were involved. There it was held that exception (4) relates only to the train itself which is delayed by reason of a specified emergency condition and not to another train which may also be delayed as a result. The Board also said:

“But the right to communicate does not arise or exist until a delay of thirty minutes or more has been occasioned by the non-arrival of the other train.”

in interpreting and applying exception (5). Here the undisputed facts clearly militate against the application of either of these exceptions because (a) the

delay of Extra No. 9 North at Branson was not caused by any emergency arising there; (b) the call to the Dispatcher was occasioned not by delay in the arrival of the opposing train but because of delay in the arrival of the roadmaster and the maintenance engineer.

Under the facts here and the Findings of Award 5282, the Board concludes that neither exception relied on applies and that, therefore, the Telegraphers' Agreement was violated.

The Carrier's alternative defense that the Claimant was not available may not properly be considered at this level of appeal because it was not made during the progress of the claim on the property. (See Award 4577 on merits of "availability" issue.)

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 19th day of July 1963.