

Award No. 12558
Docket No. TE-10994

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY
(Western Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Atchison, Topeka & Santa Fe Railway — Western Lines, that:

1. The Carrier violated the Agreement between the parties when it required or permitted the Conductor of Extra 2108 East to handle (copy, complete and deliver) a train order at Vroman, Colorado, and thereafter refused to allow a day's pay to R. O. Marston who was not on duty when the violation occurred; and
2. The Carrier shall now be required to pay R. O. Marston the equivalent of a day's pay at the rate of his position at Lamar, Colorado.

EMPLOYES' STATEMENT OF FACTS: An agreement between the parties, bearing effective date of June 1, 1951 is in evidence.

Vroman, Colorado is located 5.4 miles approximately west of Rocky Ford, Colorado on the Carrier's line between La Junta and Pueblo, Colorado. There are no employees covered by the Telegraphers' Agreement assigned at Vroman.

At approximately 9:34 P.M., June 25, 1958, the Conductor of Eastbound Extra Train 2108, while at Vroman, contacted the train dispatcher for the purpose of obtaining orders permitting him to advance his train. The train dispatcher issued the following order, addressed to Extra 407 West at Rocky Ford, which was copied, completed and delivered by the Conductor of Extra 2108 East at Vroman. This was Train Order No. 18 issued and completed at 9:34 P.M.:

"Extra 407 West wait at Rocky Ford until Nine Fifty Five 955 P.M. for Extra 2108 East Extra 407 West gets this order at Rocky Ford."

OPINION OF BOARD: Section 5, Article XIII of the Agreement reads:

"SECTION 5.

When train orders or messages of record are copied by train and engine service employees at small non-telegraph stations, or at other stations where no telegraph service employees are employed, and when emergencies as defined herein exist, no payments will be made; when such emergencies do not exist, the senior qualified extra telegraph service employe on the seniority district who does not start service that calendar day or who has not already become entitled to payment under this Article XIII for that calendar day, will be paid one day at the minimum telegraphers' rate applicable to the seniority district, it being understood that one payment is to be made for each such occurrence, excepting that not more than one day is to be paid any such extra employe on any calendar day. In each instance wherein payment is due under this Section 5, the Chief Dispatcher will notify the employe entitled thereto to make claim therefor."

I. THE FACTS

On June 25, 1958, the conductors of Extra Train 2108 received a train order from the dispatcher at a phone booth located at Vroman, Colorado, which is a blind siding on Carrier's Pueblo Division where no operator is employed.

The foregoing event was made the subject of a claim instituted on July 11, 1958, wherein Petitioner requested that the senior idle telegrapher be awarded a day's pay per Article XIII, Section 5, *supra*. This claim was denied, by Carrier, for the given reason that there were no extra telegraph service employees idle on the Division at date of claimed violation and, therefore, no payment was authorized under the rule.

Timely, Petitioner responded to the denial by issuing an amended claim for one R. O. Marston, the regularly assigned Telegrapher at Lamar, who was on one of his rest days at date of alleged violation. Carrier denied this claim on August 26, 1958, for the given reason that this Claimant was not a proper Claimant per Article XIII, Section 5, since such request went beyond the prescription set forth in the Article.

Petitioner argues that recovery was not limited to the idle extra telegrapher as established by Article XIII, Section 5, and that Marston is a proper Claimant of the penalty payment.

II. RESOLUTION

Article XIII, Section 5, imposes no previous restraint upon Carrier having train orders or messages copied by train and engine service employees under the circumstances described therein. The consideration for this privilege is an agreed upon penalty payment to "the senior qualified extra telegraph employe. . . ."

Penalty provisions of a contract are strictly construed; and, it is beyond question that we may not add to an agreement. Further, it is established that our jurisdiction is confined to interpreting and applying agreements in accord with the principles of contract law. We may not inject our predilections

as to what is fair, just and equitable. Nor can we engage in speculation as to what might have been in the minds of the parties, but not evidenced in the Agreement as executed, or otherwise proven.

What Petitioner, in effect, urges us to do is to insert in the pertinent provision a clause that absent a senior qualified extra telegrapher service employe the penalty payment shall be made to an idle regularly assigned telegrapher. For the reasons set forth in the preceding paragraph, we must reject Petitioner's theory of the case and deny the claim.

FINDINGS: This 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of May 1964.