

Award No. 12619
Docket No. TE-12646

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines), that:

1. The Carrier violates the terms of Agreement, including Memorandum of Agreement dated December 9, 1953, between the parties hereto, when on April 29, 1960, it required or permitted train service employees at Mile Posts 674.4 and 678 to receive by radio-telephone instructions in lieu of train orders for eastward and westward trains at the respective locations transmitted by a Section Foreman at Mile Post 677.

2. The Carrier shall, because of the violation set out in Item 1 of this statement of claim, compensate the senior available qualified extra telegrapher, or in the absence of such, F. A. Goldstein, senior idle regularly assigned telegrapher at Indio, California, and G. W. Litche, senior idle regularly assigned telegrapher-clerk at Niland, California, the nearest locations to the points at which the violation occurred, a day's pay (8 hours) each at the minimum rate of the Division.

3. The Carrier shall, in addition to the foregoing, for each date subsequent to April 29, 1960, on which the Carrier requires or permits employees not covered by the Telegraphers' Agreement to transmit or receive such instructions in lieu of train orders over the radio telephone, compensate the senior available qualified extra telegrapher, or in the absence of such, the senior idle regularly assigned telegrapher, at the nearest location to the points of violation, a day's pay at the minimum telegraphers' rate applicable on the Los Angeles Division.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective December 1, 1944, reprinted March 1, 1951, and as otherwise amended.

At page 66 of said Agreement are listed the positions existing at Indio and Niland, California on the effective date of said Agreement. These listings read:

"As noted above, in the claim the information received by the conductor is called 'verbal instructions in lieu of a train order'. Elsewhere in the record it is called 'a verbal train order'. But actually it was neither. The conductor did not receive a train order during the conversation; he merely inquired whether the trains scheduled to precede his on the main track had gone, and received an affirmative answer. Even if that information can be construed as 'a verbal train order' or as 'verbal instructions in lieu of a train order', the handling certainly cannot be construed as the copying of a train order. Thus in any event it is not forbidden by Rule 29 as amended."

The Carrier submits the claim obviously lacks any merit under the agreement.

CONCLUSION

Carrier has conclusively shown herein the claim is unwarranted and totally lacking in merit and asks that it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On April 28, 1960, train order No. 1731 was issued by an employe covered in the Telegraphers' Agreement to C&E Eastward trains at Indio Yard, restricting the operation of such trains to the direction of maintenance of way foreman. A copy of the train order is in the record. Train Order No. 1731 was received by the conductor and engineer of Extra 6202 East on April 29, 1960, when this train cleared Indio. There is no claim based on this train order.

At 7:15 A.M. on April 29, 1960, at Mile Post 674.4, the following conversation took place via radio telephone:

"Foreman spot tamper: Calling eastbound train at Iris.

Extra 6202: This is eastbound train at Iris, go ahead.

Foreman spot tamper: This is the foreman at the spot tamper, I am in the clear at Mile Post 677.

Extra 6202: O.K."

The conversation between the maintenance of way foreman and Extra 6202 was not a train order; no record appears to have been made by either party. See Awards 9318 and 1983 on the same property.

Since the radio telephone conversation did not constitute a train order, the copying of a train order, or the safety of passengers and property, and since Petitioner has not shown by probative evidence that this type of conversation is work which belongs exclusively to employes under the Telegraphers' Agreement, the claim must be denied.

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 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 11th day of June 1964.