

**Award No. 12964**

**Docket No. TE-11759**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Don Hamilton, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**CHICAGO, ROCK ISLAND AND PACIFIC  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad that:

1. Carrier violated the agreement between the parties when it required or permitted train or engine service employes to handle (receive, copy and deliver) train orders at Orion Junction, Illinois on October 20, 21 and 25, 1958, February 18 and 20, 1959, May 15 and 18, 1959.

2. Carrier shall be required to compensate C. E. White, Agent-Telegrapher, Osco, Illinois, in the amount of a day's pay of 8 hours on each date the violation occurred.

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

Orion Junction is a station at the western end of the Rock Island-Peoria District (commonly referred to as the "Rip Line") of this Carrier in a territory where a considerable number of coal mines are located.

When the coal mines are operating, this Carrier operates a mine-switcher from Silvis or Geneseo to Lafayette, Illinois, and return, for the purpose of supplying the mines with empty cars and hauling the loaded cars back to Silvis. The CRI&P has a trackage arrangement with the Chicago, Burlington and Quincy Railroad Company to operate this train over the CB&Q tracks both ways between Colona and Orion Junction. In order that you may better follow the routes and movement of this train, Employees submit, next below, a rough sketch of the CRI&P and CB&Q tracks in this territory (not to scale), showing the relative locations of the stations referred to in this dispute.

The CRI&P Telegraphers' Agreement was not violated at Orion Jct. when train crews copied orders from CB&Q dispatcher. Neither would it have been a violation if CRI&P crews had obtained orders from CB&Q dispatcher at Briar Bluff or Warner, which are intermediate stations between Orion Jct. and Colona.

Your Honorable Board will note that Memorandum 27 reads:

"At a location where an employe under the Telegraphers' Agreement is not employed and a train order is handled by persons other than specified in Rule 24, the Local Chairman . . ."

Reading, now Rule 24, you will note the following language:

"No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed . . ."

This language obviously limits the agreement articles to CRI&P telegraphers and telegraph offices (Rule 24) and sidings or locations (Memorandum 27) on the CRI&P. The agreement cannot be enlarged to cover handling of train orders on other properties when such train orders emanate from the other carrier's dispatcher and are addressed to CRI&P trains for purposes of controlling movements on foreign property.

If the Board were to concur in the employes' position as expressed in handling on this property, the current CRI&P Telegraphers' Agreement would be expanded to encompass work performed by telegraphers handling CRI&P train movements over tracks of other carriers with whom we have lease or joint track agreements.

Had a CB&Q telegrapher been on duty to handle the transaction to place the disputed train orders in the possession of the train crews at Orion, the CRI&P telegraphers obviously would have no claim to the work. Handling CB&Q train orders governing movement on the CB&Q track cannot be established as CRI&P telegraphers' work. Likewise, when for some reason CB&Q telegraphers are not on hand to perform this work, and instead CRI&P trainmen make direct contact with the CB&Q dispatcher over CB&Q dispatcher phone, no situation evolves to entitle CRI&P telegraphers to the work of handling CB&Q train orders for trains on CB&Q territory.

Employes' claim is based on an erroneous interpretation of Rule 24 and Memorandum 27, as well as the Scope Rule No. 1.

Because none of the above-cited rules supports employes' position, Carrier has declined claims and respectfully requests your Board to do likewise.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Chicago, Rock Island and Pacific Railroad Company operates a mine-switcher from Silvis or Geneseo to Lafayette, Illinois and return, when the coal mines are operating in that area. It has a trackage arrangement with the Chicago, Burlington and Quincy Railroad Company to operate a train over the CB&Q tracks, both ways between Colona and Orion Junction.

This claim is concerned with the copying of train orders by train or engine service employes at Orion Junction in connection with the movement of the train on the CB&Q tracks.

For many years there have been recurring disputes arise over the proper method of handling the work involved in the processing of the train orders. A long series of grievances culminated with an agreement effective July 15, 1942 which gave the work of handling CB&Q train orders at Orion or Orion Junction, for CRI&P trains using the CB&Q tracks, to the CRI&P telegraphers. This remained the standard practice until the Carrier closed the station and abolished the position of agent-telegrapher at Orion in August 1954.

The Carrier thereafter established a temporary position at Orion Junction to handle train orders during the periods of time when the mines were operating.

During the time between 1954-1957, a number of disputes arose, but all of them were either withdrawn or settled on the property. In October of 1957, another agreement was reached which provided that Carrier would give the operator at Osco or Geneseo, a call when it was necessary. The 1957 coal season passed without incident under the terms of this agreement.

Several times during the first part of 1958, the Agent-Telegrapher at Osco was not called and the train orders were copied by a member of the train crew at Orion Junction. The claims which resulted were paid on the property.

The instant claim arises as a result of train orders which were copied at Orion Junction by train or engine service employes during the latter months of 1958 and the first part of 1959.

The employes contend that the past practice and the agreements which have been made and enforced in regard to these types of claims on this railroad are sufficient to sustain the claim.

The Carrier maintains that this work is that of another Carrier and therefore is not covered by the agreement with the CRI&P. They further allege that the past practice, advanced by the employes, is irrelevant to this claim and that the claims paid in the first months of 1958 were paid in error at the local level.

It is the opinion of the Board that the long and continuous actions of the parties are controlling in this case. Indeed, they give us an indication of the parties' intent, which is manifestly more indicative than are the words which they have written. We believe that the parties are now bound through acquiescence, to the conclusions which must be drawn from their actions. Clearly, they give us an accurate reflection of their intentions with regard to the agreement. Therefore, we believe that this past practice on the part of both the Carrier and the organization demands that this claim be sustained.

**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 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 14th day of October 1964.