

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE TEXAS AND PACIFIC RAILWAY COMPANY

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

1. Carrier violated the Agreement between the parties when it required or permitted employes not covered by the Agreement to handle train orders at Roscoe, Texas on January 29, February 1, 2, 3, 8, 9, 10, 1960; at Loraine, Texas on February 4, 5, 11, 12, 15, 16, 17, 18, 19, 23, 24, 25, 26, 29, March 1, 3, 4, 7, 9, 10, 11, 1960; at Colorado City, Texas on March 24, 25, 28, 29, 30, 31, April 1, 4, 5, 6, 7, 8 and subsequent dates.

2. Carrier shall be required to compensate in the amount of a minimum call payment: The occupant of the position of agent at Roscoe, Texas on January 29, February 1, 2, 3, 8, 9, 10, 1960; the occupant of the position of agent at Loraine, Texas on February 4, 5, 11, 12, 15, 16, 17, 18, 19, 23, 24, 25, 26, 29, March 1, 3, 4, 7, 9, 10, 11, 1960; the occupant of the position of third trick telegrapher at Colorado City, Texas on March 24, 25, 28, 29, 30, 31, April 1, 4, 5, 6, 7, 8 and subsequent dates on which violations occurred at Colorado City.

EMPLOYES' STATEMENT OF FACTS: The stations mentioned in this dispute are located on the Western Division of this Carrier. Big Spring at MP 513, Colorado City at MP 476, Loraine at MP 467, Roscoe at MP 456, and Baird at MP 386. Big Spring and Baird are continuous train order offices with service around the clock. At Colorado City the Agent-Operator is assigned 8:00 A. M. to 4:00 P. M. and the Operator from 11:30 P. M. to 7:30 A. M.; at Loraine, Agent-Operator assigned 8:00 A. M. to 5:00 P. M. (1 hour meal period); at Roscoe, Agent-Operator from 7:00 A. M. to 4:00 P. M. (1 hour meal period).

On the dates listed in the Statement of Claim and on some subsequent dates at Colorado City, train orders were handled at Roscoe, Loraine, and Colorado City by employes not covered by the Telegraphers' Agreement.

At times, a certain station might fall within a machine's limits. Even in such an instance, chances are more than nine to one that the machine will neither tie up nor go on duty at that station, for the reasons hereinabove mentioned.

The rule cited by Petitioner was written to keep others than telegraphers from copying orders and instructions for work trains tying up and leaving from stations where telegraphers are employed, but not on duty.

No one other than telegraphers copied the orders involved.

These machines were not work trains.

These machines did not tie up or leave from stations, but from portable set-offs on line of road.

The claimant telegraphers were on duty when the orders were sent and/or the machines went to work.

The claims can not possibly have any merit. The Carrier respectfully requests that they be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In the instant claim, the Organization alleges that the Carrier has violated Article 20, Section D, paragraph two of the Agreement. The language involved in the rule mentioned is as follows:

"A telegrapher will be called to copy train orders and instructions pertaining to the operation of a work train tying up or leaving from a station where a telegrapher is employed, but not on duty. The telegrapher will be paid in accordance with the call rule."

It is obvious that the language of the rule requires that several variable factors exist before the rule will be applicable.

The evidence indicates that the machines involved in this claim could not be classified as work trains. That these machines did not in fact tie up at stations where telegraphers are employed, is uncontradicted.

Therefore, since these machines are not work trains and since they did not tie up at stations where telegraphers are employed, we must conclude that the Organization has failed to establish the essential elements necessary to substantiate a violation of the rule cited.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1965.