

Award No. 13292
Docket No. TE-14453

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO & ILLINOIS MIDLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago and Illinois Midland Railway Company, that:

1. Carrier violated the terms of an Agreement between the parties when on April 16, 1962 it required or permitted Trainmaster A. S. Alstott, an employe not covered by the Telegraphers' Agreement to "OS" a Tie Machine and Compressor in the clear to the train dispatcher over the telephone.

2. Carrier shall, because of the violation set out in paragraph one hereof, compensate the senior idle extra telegrapher eight (8) hours pay at the minimum telegraphers' rate.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto effective November 1, 1946, revised and reprinted December 1, 1961, and as otherwise amended. Copies of said Agreement, as prescribed by law, are presumed to be on file with your Board and are, by this reference, made a part hereof.

At pages 43 and 44 of said Agreement are listed the positions existing at Petersburg, Illinois on the effective date of said Agreement. For ready reference the listing reads:

"AGENTS

Petersburg 1.67 rate per hour

TELEGRAPHER-CLERKS

Petersburg 1.57 rate per hour"

It is thus established that as of the effective date of the current Agreement telegraph (telephone) positions existed at Petersburg on an around-the-

AWARD 10511

" * * * It is not the function of this Board, however, to indiscriminately assess punitive damages where no fraud, no discrimination or no malice is shown in the record and where no employee, whether it be the proper Claimant or not, had suffered or may have suffered any damages by reason of such alleged violation.

It is a fundamental principle of law that damages for a breach of contract is the amount which the Claimant actually suffered by reason of such a breach. Consequently an employee wrongfully discharged is entitled to the amount he would have earned if he had not been so wrongfully discharged. See Award No. 1638 (Carter) Second Division. In Award No. 8673 (Vokoun) this Board said:

' * * * In the assessment of penalties the usual penalties are based on losses to individuals who are caused monetary loss because of a contractual violation, in order to make one "whole". Punitive damages are not ordinarily approved by the Board.'

Also see Awards 3651 (Miller), 5186 (Boyd), 7309 (Rader) and 8674 (Vokoun).

We cannot see how it will benefit the relationship between the Organization and the Carrier and effectuate the purpose of the Agreement to assess punitive damages on the evidence contained in the record."

CONCLUSION

There is no rule or practice to support the organization's contentions. The exclusive use of wayside or other telephones has not been granted claimant organization by rule or practice. The request for any penalty under these circumstances is completely unfounded.

A denial is, therefore, respectfully requested.

OPINION OF BOARD: During April 1962 roadway maintenance forces were engaged in tie renewal work in the Petersburg area. They had protection under Train Order No. 308 issued on April 12, 1962 to all trains moving in the area as follows:

"Hours 7:30 A. M. until 3:30 P. M. daily except Saturday and Sunday men working on track between north end Petersburg Spur and Hill Top. Northward trains wait at north end Petersburg Spur until given proceed signal by flagman. Southward trains wait at Hill Top until 3:01 P. M. then proceed at restricted speed thru these limits prepared to stop unless given proceed signal."

At 2:04 P. M. on Monday, April 16, 1962 Trainmaster Alstott telephoned to the Dispatcher from a wayside telephone at the south end of the siding at Hill Top. Hill Top is a prepaid station under the jurisdiction of the Petersburg Agency. The latter is manned by an agent-telegrapher from 6:00 A. M. to 3:00 P. M. Monday through Friday.

His message was that the track was clear of the tie machine and com-

pressor. The Dispatcher called the Operator at Oakford and issued Train Order No. 310 as follows:

"C & E Extra 52 South — Oakford

Order No. 308 is annulled.

Complete 2:06 P. M. Signed Wallace (Operator)"

The Organization filed a claim for eight hours compensation for the senior idle extra telegrapher.

The issues raised in this case are so similar to those raised and resolved, in our award in TE-12348 that there is no need to reiterate them here.

The Carriers claim that the communication in dispute was not a protected communication for telegraphers as those involved in TE-12348 and TE-14423 is without merit. We agree with the Special Board of Adjustment 355 which in Award 145 states:

"The purpose of the phone call complained of was to give the Dispatcher the information he needed to issue train order No. 13 which annulled the early speed restrictions composed by train order No. 2.

Thus the telephone was used by the section foreman for the issuance of a train order and a violation of the Agreement will be sustained."

As in TE-12348 we are unable to agree with the Organization contention that eight hours compensation is proper for the reasons set forth therein.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employee 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 to the extent shown by the opinion.

AWARD

Claim sustained to the extent of three hours compensation for each violation in accordance with the terms of Article 7.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February, 1965.

CARRIER MEMBERS' DISSENT TO AWARD 13292, DOCKET TE-14453

For the reasons set out in our Dissent to Award 13290, we dissent.

/s/ C. H. Manoogian

/s/ R. A. DeRossett

/s/ W. F. Euker

/s/ G. L. Naylor

/s/ W. M. Roberts