Award No. 13920
Docket No. TE-13262

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

MIDLAND VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Midland Valley Railroad Company, that:

1. The Carrier violated the Agreement between the parties when, on each of the dates specified below, it permitted and required employes not covered by said Agreement to handle train orders at Arkansas City, Kansas, in lieu of calling Agent-Telegrapher I. L. Henson, who was entitled to perform such work.

2. The Carrier shall now be required to compensate Agent-Telegrapher I. L. Henson in an amount equivalent to a "Call" for each date listed below because of said violations:

Date	Train Order No.	Train Addressed
February 23, 1961	40	Eng. MV 152
March 28, 1961	6–58	Eng. MV 151
May 29, 1961	639–1–20–36	Eng. MV 154
May 31, 1961	673–3–35–36	Eng. MV 151
June 2, 1961	606–2–38–39	Eng. MV 153
June 5, 1961	639–1–48–49	Eng. MV 151
June 7, 1961	609–1–43–44	Eng. MV 153
June 9, 1961	611–6–32–40	Eng. MV 154
July 3, 1961	2–52–53	Eng. MV 154
July 5, 1961	1–39–40	Eng. MV 151
July 7, 1961	1–33–34	Eng. MV 153
July 10, 1961	2–32–33	Eng. MV 154

Date	Train Order No.	Train Addressed
July 12, 1961	1–51–52	Eng. MV 154
July 14, 1961	5–30–31	Eng. MV 153
July 17, 1961	1–38–39	Eng. MV 805
July 19, 1961	4–36–37	Eng. MV 152
July 21, 1961	6–43–44	Eng. MV 801
July 24, 1961	1–24–25	Eng. MV 805
July 26, 1961	4–37	Eng. MV 151
July 28, 1961	6–50	Eng. MV 808
July 31, 1961	1–25	Eng. MV 153
August 2, 1961	3–27	Eng. MV 809
August 4, 1961	6–57	Eng. MV 152
August 7, 1961	5–32	Eng. MV 153
August 9, 1961	3–40	Eng. MV 154
August 11, 1961	4–23	Eng. MV 153
August 14, 1961	1–16	Eng. MV 801
August 16, 1961	4–16	Eng. MV 153
August 18, 1961	6–54	Eng. MV 152
August 21, 1961	5–18	Eng. MV 807
August 23, 1961	4–34	Eng. MV 152
August 25, 1961	1–38	Eng. MV 807
August 28, 1961	4–22	Eng. MV 154
August 30, 1961	1–27	Eng. MV 153
September 1, 1961	1–46	Eng. MV 154
September 4, 1961	2–17	Eng. MV 153
September 6, 1961	6–42	Eng. MV 154
September 11, 1961	1–32	Eng. MV 153
September 22, 1961	686–20–21	Eng. MV 154
September 25, 1961	650–32–33	Eng. MV 152
September 27, 1961	688–4–35	Eng. MV 154
September 29, 1961	645–8–34	Eng. MV 153
October 2, 1961	605–2–30	Eng. MV 152
October 4, 1961	662–5–26	Eng. MV 153
October 6, 1961	625–6–24	Eng. MV 152
October 9, 1961	673–5–24	Eng. MV 154
October 11, 1961	622–10–33	Eng. MV 153
October 13, 1961	667–10–48	Eng. MV 801
October 17, 1961	632–7–31	Eng. MV 154
October 19, 1961	680–2–32	Eng. MV 152
October 21, 1961	7–31	Eng. MV 154
November 2, 1961	657–1–32	Eng. MV 154
November 4, 1961	681–10–38	Eng. MV 153
November 7, 1961	633–14–34	Eng. MV 152

Date	Train Order No.	Train Addressed
November 9, 1961	678–5–40	Eng. MV 154
November 11, 1961	625–3–30	Eng. MV 153
November 14, 1961	659–3–46	Eng. MV 152
November 16, 1961	603–1–50	Eng. MV 154
November 18, 1961	651–7–25	Eng. MV 152
November 21, 1961	610–5–62–70	Eng. MV 153
November 23, 1961	673–3–21	Eng. MV 154
November 25, 1961	607–10–29	Eng. MV 152
November 28, 1961	654–3–45	Eng. MV 154
November 30, 1961	2–48	Eng. MV 152
December 2, 1961	1–26	Eng. MV 153
December 5, 1961	5–52	Eng. MV 153
December 7, 1961	6–54	Eng. MV 154
December 9, 1961	8–31	Eng. MV 152
December 12, 1961	10–63	Eng. MV 154
December 14, 1961	4–54	Eng. MV 151
December 16, 1961	10–31	Eng. MV 154
December 19, 1961	7–36	Eng. MV 153
December 21, 1961	9–69	Eng. MV 154
December 26, 1961	9–41	Eng. MV 152
December 28, 1961	6–48	Eng. MV 809
January 2, 1962	2–35	Eng. MV 153
January 4, 1962	5–45	Eng. MV 152
January 9, 1962	4–51	Eng. MV 154
January 11, 1962	10–77	Eng. MV 807
January 16, 1962	11–61	Eng. MV 152
January 18, 1962	5–59	Eng. MV 803
January 20, 1962	17–38	Eng. MV 153

EMPLOYES' STATEMENT OF FACTS: The foregoing incidents of violation, as cited by dates, train order numbers and trains to whom the orders were addressed, are reflected from nine separate claim files timely handled on the property between the parties, without any degree of variation. Typical of said claims is the one covering violations occurring July 3, 5, 7, 10, 12 and 14, 1961. In order to spare the record we will address ourselves to that particular claim file with the understanding that it will be considered as representative of and applicable to all claims included in this docket.

Carrier's main line of railroad extends from Fort Smith, Arkansas northwestwardly to Wichita, Kansas, a distance of approximately 320 miles. Arkansas City, Kansas, is approximately 50 miles southeast of Wichita; Muskogee, Oklahoma, is approximately 110 miles north and west of Fort Smith. A rough sketch of the line Wichita to Muskogee is attached as Employes' Exhibit A. Included also are segments of the Missouri Pacific Railroad which are mentioned from time to time in this submission.

The train crews in this instance are handling their own orders, as contemplated by the agreement, not someone else's!

Delivery of train orders by a telegrapher to a crew in Wichita to be executed at MoPac Jct. (Midland Jct.) is not a violation of the Telegraphers' Agreement; therefore, we respectfully request that the employes' claims be denied.

Since this is an ex parte case, this submission has been prepared without seeing the employes' statement of facts or their contention as filed with the Board, and the Carrier reserves the right to make a further statement when it is informed of the contention of the petition, and requests an opportunity to answer in writing any allegation not answered by this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: The Western Subdivision of the Midland Valley Railroad extends from Wichita, Kansas to Pawhuska, Oklahoma. Between Arkansas City and Silverdale, Kansas lies a nine-mile track which is owned by the Missouri Pacific Railroad and over which the Midland Valley Railroad operates its trains under a trackage agreement. At Arkansas City, approximately eight-tenths of a mile from the Midland Valley Junction, is a one-man station where Claimant, Mr. I. L. Henson, is the regularly assigned Agent-Telegrapher. Before these claims arose, train orders were received directly from the Missouri Pacific Train Dispatcher at Coffeyville, Kansas, by the Midland Valley Telegrapher-Agent at Arkansas City who copied them and personally delivered them to the train crew. When the Midland Valley train arrived at Arkansas City from Wichita outside the Agent-Telegrapher's assigned hours, he was held on duty or called in to handle the train orders on an overtime basis.

Under a new policy, train orders originating from the Missouri Pacific Train Dispatcher at Coffeyville, Kansas, were transmitted by him to the Midland Valley Train Dispatcher at Muskogee, Oklahoma, who in turn transmitted them to the Midland Valley operator at Wichita. This operator copied them on Missouri Pacific forms and personally delivered them to the train crew.

Claimant Agent-Telegrapher Henson contends that when the Missouri Pacific Train Dispatcher sent these orders via Muskogee to the Train Dispatcher on the Midland Valley, Carrier violated the Telegraphers' Agreement, particularly Rule 4. He maintains that the manner employed to furnish train orders at Wichita was for the sole purpose of depriving Claimant of work attaching to his position at Arkansas City, where the orders were delivered and were to take effect. Furthermore, Claimant takes the position that the trains and their crews which the Wichita operator cleared were the Midland Valley trains at that location, whereas the train orders were addressed to the Missouri Pacific trains which were to be established at Midland Valley Junction. Consequently, it argues that the disputed orders were not delivered to these trains until they came into being at the Junction and that the regularly assigned Agent-Telegrapher should have been called for this purpose. In effect, Claimant's position is that the train crew not covered by the Agreement took delivery of train orders from themselves at Arkansas City, and thus deprived the available regular Agent-Telegrapher of work to which he is entitled.

In its denial, Carrier argues that the handling of the train orders was performed by telegraphers, and, hence, there was no violation of the Agreement.

In determining this dispute the questions to be resolved are whether the employes outside of the Agreement performed telegrapher work and whether Carrier was required to call the Agent-Telegrapher at Arkansas City to handle the train orders at that point where they were to be executed.

Rule 4 provides that no employe other than those covered by the Agreement and Train Dispatchers will be permitted to handle train orders at telegrapher or telephone offices where an operator is employed and is available or can be promptly located. Clearly the purpose of this rule is to prevent encroachment upon work by others not covered by the Agreement. In the instant case, the train orders were delivered by a telegrapher at Wichita to the train crew there. He performed work accruing to his craft.

The train was the same all the way through the trip from Wichita to Pawhuska, Oklahoma, including the strip of track covered between Midland Junction to Silverdale. The train orders the crew received at Wichita were for its own use, rather than for delivery to another train crew at Arkansas City. Although the train orders were addressed Extra MV 154 East at Midland Valley Junction, and this train was to operate from Midland Valley Junction to Silverdale as a Missouri Pacific train, we find that the train crew did not effect the delivery of these orders to the train departing from Midland Valley Junction and thereby substitute for the Agent-Telegrapher at Arkansas City. The handling of the train orders was performed by the Agent-Telegrapher at Wichita.

Since the crew and train that received the train orders at Wichita were the same that executed them at Arkansas City and since no employes outside the scope of the Agreement intervened to handle them, we find no violation of the Agreement. Our findings are consistent with Award No. 6609, Award No. 12 of Special Board of Adjustment No. 506, and Award No. 4 of Special Board of Adjustment No. 266.

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 26th day of October 1965.