



Award No. 14536

Docket No. TE-13825

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that:

1. Carrier violated the Agreement between the parties when on September 14, 1961, it required or permitted a train service employe on Engine 18 to secure verbal train orders while working between Lakeland and Carters, Florida.

2. Carrier violated the Agreement between the parties when on October 2, 1961, it required or permitted carrier official on Extra 195 North to secure verbal train order while Extra 195 North was working between Haines City and Lake Alfred, Florida.

3. Carrier violated the Agreement between the parties when on October 3, 1961, it required or permitted a train service employe on Engine 667 to secure a verbal train order while working between Lakeland and Carters, Florida.

4. Because of these violations Carrier shall compensate the senior idle extra telegrapher on the Tampa Division for each day, September 14, October 2 and 3, 1961, and if no idle extra telegraphers, the senior idle telegraphers observing a rest day on each of such days, each in the amount of a day's pay of eight (8) hours at the minimum pro rata telegraphers' (telephoners') rate on such seniority district.

5. Carrier violated the Agreement between the parties when on October 12, 1961, it required or permitted Brakeman Jordan on Second 218 to secure verbal train order while working between Dunnellon and North Gibara, Florida.

6. Because of this violation Carrier shall compensate the senior idle extra telegrapher on October 12, 1961, and, if no idle extra telegrapher, the senior idle telegrapher observing a rest day on October 12, 1961, in the amount of a day's pay of eight (8) hours

at the minimum pro rata telegraphers' (telephoners') rate on such seniority district.

7. Carrier violated the Agreement between the parties when on October 5, 1961, it required or permitted Conductors Keen, Hurt, Martin, Johnson and Rowland, train service employees, not covered by the Agreement, to handle (receive, copy and deliver) train orders on the Tampa Division.

8. Because of these violations Carrier shall compensate the five senior idle extra telegraphers on the Tampa Division on October 5, 1961, and if no idle extra telegraphers (or less than five), the five senior idle telegraphers (or less than five, depending on the number of idle extra telegraphers) observing a rest day on October 5, 1961, each in the amount of a day's pay of eight (8) hours at the minimum pro rata telegraphers' (telephoners') rate on such seniority district.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective November 1, 1939, as supplemented and amended, is available to your Board and by this reference is made a part of this dispute as though set out herein word for word.

There are three claims encompassed in this dispute which were handled separately on the property. Inasmuch as the three claims involve the application of the same rules, we have consolidated them into one submission to your Board. We shall refer to the claims arising at Lakeland and between Haines City and Lake Alfred, Florida (paragraphs 1, 2, 3 and 4 of Statement of Claim) as Case No. 1; the claim arising at Dunnellon, Florida (paragraphs 5 and 6 of Statement of Claim) as Case No. 2; and the claims arising on the Tampa Division (paragraphs 7 and 8 of Statement of Claim) as Case No. 3. All the claims here involved were filed and handled in the usual manner up to and including the highest officer of the Carrier and have been declined.

The sole issue in this dispute is whether the claimants had the contractual right to perform the work herein involved. The compensatory claims are only collateral issues in that the Carrier does not dispute the correctness of these claims once the substantive claims of violations are settled.

CASE NO. 1

(Paragraphs 1, 2, 3 and 4, Statement of Claim)

On September 14, 1961 at 11:05 A. M., Yard Foreman T. P. Turner, Lakeland, Florida, called the train dispatcher at Tampa, Florida, by telephone, approximately 30 miles away, and copied the following telegram in lieu of a train order, which reads:

"Engine 18 has work limits north freight lead switch Lakeland to Carters until 12:01 P. M. /s/ NRH."

The distance between Lakeland and Carters is 5.4 miles.

On October 2, 1961, Trainmaster R. M. Beach at 2:30 P. M., called the train dispatcher at Tampa, Florida, a distance of approximately 49.7 miles, and copied the following telegram in lieu of a train order:

mittee could not accept his decision and it would be necessary to give further consideration to this claim (ORT Exhibit 21).

ORT Exhibits 1 through 21, outlined above, depicting the handling on the property, are attached hereto and made a part hereof as though set out herein word for word.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The Employes' Statement of Claim fails to state that the territory covered in this dispute involves train operations in Centralized Traffic Control territories and train orders are not in any manner involved in the claim.

The claim is in behalf of the senior idle extra telegraphers, for eight hours at the minimum pro rata telegraphers' (telephoners') rate, for each and every day when employes other than telegraphers secured so-called "verbal train orders" affecting the movement of trains entirely within Centralized Traffic Control territories, as shown in the following table:

Para- graph of Claim	Date	Train	Employee	Station	CTC Control Station
1	9-14-61	Engine 18	Yd Condr Turner	Lakeland	Tampa
2	10-2-61	Ex 195 North	Trainmaster Beach	Lake Alford	Tampa
3	10-3-61	Engine 667	Yard Condr Turner	Lakeland	Tampa
5	10-12-61	Second 218	Brakeman Jordan	Dunnellon	Ocala
7	10-5-61	Extra 202	Conductor Keen	Davenport	Tampa
7	10-5-61	Extra 377	Conductor Hurt	Kissimmee	Tampa
7	10-5-61	Extra 177	Conductor Johnson	Sanford	Tampa
7	10-5-61	Extra 214	Conductor Martin	Lakeland	Tampa
7	10-5-61	Ex 207 South	Conductor Rowland	Winter Park	Tampa

Representative of the Organization has taken the position that no employes save telegraphers have any right to call the train dispatcher direct to obtain or secure permission to occupy the track under protection of signals controlled by the train dispatcher, that the information thus obtained was "messages, orders and/or reports of record", and work belonging exclusively to telegraphers under the scope article of their agreement.

The General Chairman was advised that calling the train dispatcher for time and working limits was not in violation of the Telegraphers' Agreement, and was in accordance with Rules 557 and 561 in "Rules of the Operating Department."

(Exhibits not reproduced.)

OPINION OF BOARD: The material facts are not in dispute.

The Organization presents several claims, and designates them as Case No. 1, Case No. 2, and Case No. 3.

Case No. 1 refers to claims arising at Lakeland and between Haines City and Lake Alfred, Florida. Case No. 2 refers to claims arising at Dunnellon, Florida. Case No. 3 refers to claims arising at Tampa Division, Florida.

The Carrier placed Centralized Traffic Control in operation on the Tampa Division in November of 1953 and in the Ocala Division in 1959. Both divisions being the territory in which it is claimed that claims arose.

The Organization contends that subsequent to the installation of the CTC the Carrier, on the dates set forth in the respective claims, violated the Agreement, by requiring or permitting employees not covered by the agreement to handle "verbal train orders."

The Organization contends that the communications involved in the claims before this Board constitute train orders and, therefore, should have been handled exclusively by the Order of Railroad Telegraphers, under the terms of their Agreement with the Carrier.

An examination of the communications and/or messages involved discloses that they are not train orders, but are what is known as "Track and Time Limit" messages.

The sole issue involved in this case is whether or not the securing of track and time limits is properly within the province of the employees of the Organization.

The Organization, in support of its contention, cites various rules of the Agreement, and in addition cites the Mediation Agreement (National Mediation Board Case A-511) dated June 20, 1938. The rules and agreement are set forth in full in the record.

An examination of the Mediation Agreement discloses that it was entered into "In settlement of employees' request for rule jointly proposed by the representatives of the employees to govern the handling of train orders, messages and/or reports of record by train and engine service employees; it is agreed, in lieu of rule proposed, that train and/or engine service employees will not be required to call dispatchers on telephone in connection with train movements or take train orders over the telephone. . . ." (Emphasis ours.)

There can be no question but that the agreement concerned itself with the handling of train orders, messages and/or reports of record. We hold that the words "train movement" in the agreement refers to train movements covered by the words train orders, messages and/or reports of record under consideration in the settlement of the rule proposed.

A dispute, similar to the one in question, was considered and decided by this Board and by Award No. 1, Special Board of Adjustment No. 100. All these awards denied the claims presented therein and held that communications of the type involved in the instant claims were not train orders or messages of record. Therefore, the claims will be denied. See Award No. 1, Special Board of Adjustment No. 100 (Douglass); Award 11161 (Moore); Award 11720 (Hall) and Award 14028 (Hamilton).

The Organization in its submission to the Board lays stress on the fact that the Carrier has settled and/or compromised similar claims on previous occasions. This Board, on any number of occasions, has held that offers of compromise and settlement and previous settlements of claims are not evidence of anything, and not admissible as evidence.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 between the parties was not violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June 1966.