

Award No. 14727
Docket No. TE-12541

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David L. Kabaker, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines), that:

1. The Carrier violated the terms of the parties' Agreement, including Memorandum of Agreement dated December 9, 1953, when it required or permitted train service employees and/or section foremen, employees not covered by the Telegraphers' Agreement, to transmit and/or receive instructions in lieu of train orders by radio telephone to eastward and westward trains at the Mile Posts and on the dates set out below, all of which are on the Los Angeles Division.

Eastward trains:	Mile Posts:	Dates:
	636.70	Dec. 2, 1959
	641.10	Dec. 15, 1959
	641.50	Dec. 17, 1959
	641.70	Dec. 18, 1959

Westward trains:	Mile Posts:	Dates:
	637.70	Dec. 2, 1959
	642.20	Dec. 15, 1959
	642.60	Dec. 17, 1959
	642.70	Dec. 18, 1959

2. The Carrier shall, because of the violations set out in Item 1 of this statement of claim, compensate the senior qualified extra telegrapher, or in the absence of such L. Rosenfeld, senior idle regularly assigned qualified telegrapher at Indio, California, a day's pay at the minimum telegrapher's rate for each date December 2 and 15,

1959; and F. A. Goldenstein, the senior idle regularly assigned qualified Telegrapher at Indio, California, a day's pay at the minimum Telegraphers' rate for each date December 17 and 18, 1959. Indio being the nearest location to the points at which the violations occurred.

3. The Carrier shall, in addition to the foregoing, for each date subsequent to those set out in Item 2 of this statement of claim, on which the Carrier requires or permits employes not covered by the Telegraphers' Agreement to transmit and/or receive such instructions in lieu of train orders over the radio telephone, compensate the senior qualified idle extra telegraphers, or in the absence of such, the senior idle regularly assigned telegrapher, at the nearest location to the point or points of violation, a day's pay at the minimum telegraphers' rate applicable on the Los Angeles Division.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective December 1, 1944, reprinted March 1, 1951, and as otherwise amended.

At page 66 of said Agreement are listed the positions existing at Indio, California on the effective date of said Agreement. This listing reads:

Location	Title of Position	Hourly Rate of Pay
Indio "ND"	Agent	\$1.885
"	1st Telegrapher-Clerk	1.74
"	2nd Telegrapher-Clerk	1.74
"	3rd Telegrapher-Clerk	1.74
Indio "DO"	1st Telegrapher-Clerk-PMO	1.74
"	2nd Telegrapher-Clerk-PMO	1.74
"	3rd Telegrapher-Clerk-PMO	1.74
East Indio "ON"	1st Telegrapher-Clerk	1.74
"	2nd Telegrapher-Clerk	1.74
"	3rd Telegrapher-Clerk	1.74

Indio is located at Mile Post 599. The Mile Post locations involved in this dispute, as set forth in Item 1 of the Statement of Claim, are located thirty-six to forty-two miles east of Indio.

On a date not shown in the record of this case, the Carrier issued special instructions to interested employes, modifying operating rule 206(B), which covers the transmitting and repeating of train orders by telephone. The modifying instructions read:

"Rule 206-B.

When rubber stamp and printed trainorder form are used for issuance of Form Y trainorder, train dispatcher after recording from in trainorder book with stamp is required to write and transmit only the order number, addresses, mile post locations, stations, times and dates. Trainorder operators using the printed form for such train orders are required to copy and repeat only that portion of the order transmitted by the train dispatcher."

"It is the contention of the Organization that train orders were not issued as provided for by the current Agreement, at the various Mile Post locations indicated in paragraph 1 of this claim; instead, verbal instructions in lieu of train orders were transmitted by radio to these train service employees, in violation of the current Telegraphers' Agreement."

5. By letter dated April 5, 1960 (Carrier's Exhibit "B"), Carrier's Assistant Manager of Personnel denied the claim, advising Petitioner's General Chairman that the execution of a Form Y train order in the manner involved in this case did not contravene any provisions of the current agreement and the use of radio did nothing more than expedite the passing of appropriate information from track force to crew of train which would otherwise be passed either by hand signal or verbally on a person to person basis.

OPINION OF BOARD: A Form "Y" train order was issued in the instant case by a dispatcher to a telegrapher. Under this form of flag protection a yellow sign 24" x 24" is mounted along the right of way 1½ miles in advance of a red sign of the same size. The red sign is mounted 1000 feet in advance of where the main track is obstructed.

Train approaching the yellow sign will reduce speed sufficiently to be able to stop at the red sign unless foreman in charge of the work gives train a proceed signal with green flag or lantern or orally authorizes the train to proceed.

In the instant case the oral authorization to proceed was given by the foreman to the engineer by means of radio.

The Employees protest the use of the radio, claiming a violation of the parties Labor Agreement dated December 9, 1953.

The claim herein involves the same parties and essentially the same facts and issue set forth in Award 12619, wherein the claim was denied.

It must be further recognized that Awards 41 and 42 of Special Board of Adjustment No. 553 have denied similar claims between the same parties.

The conclusion must be that Award 12619, and Awards 41 and 42 of Special Board of Adjustment No. 553 are controlling of the instant claim. This claim therefore must be dismissed.

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 Claim shall be dismissed.

AWARD

Claim dismissed.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August 1966.