



Award No. 15060

Docket No. TE-13532

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, Referee

PARTIES TO DISPUTE:

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

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Chicago Great Western Railway, that:

1. Carrier violated the Agreement between the parties when it failed and refused to compensate Telegrapher L. S. Hickie for a call on September 28, 1960, and Telegrapher E. A. Otting for a call on September 17 and 24, 1960, account members of train crews, employes not covered by the Agreement, calling the train dispatcher from Fair Ground, Iowa on those dates at a time no telegrapher was on duty, to ascertain when the Illinois Central Railroad could allow their trains to proceed over the Mississippi River Drawbridge.

2. Carrier shall be required to compensate Telegrapher L. S. Hickie in the amount of a call of two (2) hours' pay at the time and one-half rate for September 28, 1960, and Telegrapher E. A. Otting for a call of two (2) hours' pay at the time and one-half rate for each day, September 17 and 24, 1960.

3. Carrier violated the Agreement between the parties when it failed and refused to compensate Telegrapher E. A. Otting for a call on November 5, 1960, account Conductor Powers of Extra 105-C East, an employe not covered by the Agreement, calling the Illinois Central Railroad telegrapher at East Cabin, Illinois, from Fair Ground, Iowa at a time no telegrapher on duty at Fair Ground, to ascertain when the Illinois Central Railroad could allow train to proceed over the Mississippi River Drawbridge.

4. Carrier shall be required to compensate E. A. Otting for a call of two (2) hours' pay at the time and one-half rate for November 5, 1960.

5. On any dates subsequent to dates named above that violations of the Agreement as outlined above occur at Fair Ground, Carrier shall compensate an available telegrapher employed at Fair Ground in the minimum of a call of two (2) hours' pay at the time and one-half rate.

Mr. L. M. Kingsbury, General Chairman
The Order of Railroad Telegraphers
3860 Lindell Boulevard
St. Louis 8, Missouri

Dear Sir:

This has further reference to exchange of correspondence ending with your letters October 25 relative to Claims No. D-136 and No. D-141, former in behalf of Claimants E. A. Otting and L. S. Hickie premised on incidents at Fair Ground (Dubuque), September 17, 24 and 28, 1960 and the latter in behalf of Claimant E. A. Otting premised on an incident at Fair Ground (Dubuque), November 5, 1960:

It is gratifying to learn from the third and fourth paragraphs of your letters that you have finally concurred in the Carrier's contention movement over IC trackage between Dubuque Junction and Portage is governed by signal indication and that CGW trains are permitted to enter IC trackage toward East Cabin only upon a 'clear' or 'proceed' signal indication in the same manner as other trackage protected by automatic signaling, i.e., CGW trains are prohibited from entering the IC trackage when signal indication is 'red' or 'stop.' Furthermore, as pointed out in my letter July 7, 1961, "The volume of traffic being handled on the joint double track is comparatively light and there is little opportunity to "block street crossings" and 'even if some unusual situation should develop' which caused a 'red' or 'stop' signal indication, 'it would not result in a serious traffic problem in the circumstances of the instant case where the train movements were made primarily between 1:00 A. M. and 3:00 A. M.'; hence, there was no real operating necessity for alleged telephone conversations between CGW train crews and IC operator at East Cabin, nor any valid basis for claim that a violation of the collective agreement resulted from such alleged telephone conversations.

The next last paragraph of your letters deals with Rule 704 of Carrier's 'Rules and Regulations of the Operating Department,' the interpretation of which is the sole prerogative of Management, and while we readily concede your privilege to interpret rules of the collective agreement for the employees represented by your Organization, the Management reserves the right to determine violations of said 'Rules and Regulations of the Operating Department.' Incidentally, your interpretation of the rule is erroneous.

Yours truly,

/s/ D. K. Lawson
Vice Pres.-Personnel"

OPINION OF BOARD: This dispute involves a contention by the Employees that conductors of freight trains leaving Fair Ground, Iowa, at times when no telegrapher was on duty, used the telephone to communicate with the train dispatcher and/or IC telegrapher at East Cabin, Illinois, for the purpose of securing authority for movement of their trains; and that such use of the telephone violated their agreement.

Trains leaving Fair Ground (Dubuque) use CGW tracks to Dubuque Junction where those tracks intersect with the IC. IC rails are used from Dubuque Junction, across the Mississippi River to Portage, a distance of about fourteen miles. At a point about one mile east of Dubuque Junction is located East Cabin where telegraphers of the IC are employed. These telegraphers operate signals which control all train movements on IC rails. These facts appear to be uncontroverted in the record.

Other facts pertinent to a decision, however, are in dispute. Employees contend that there exists a requirement of long standing that before a train leaves Fair Ground it must ascertain whether the signal at Dubuque Junction will permit the train to proceed without stopping, and that this information has traditionally been secured by the telegraphers employed at Fair Ground. Carrier does not agree with these assertions, although it does not directly deny them.

The Employees assert that on the three dates listed in claim No. 1 telephone calls were made to the Carrier's train dispatcher who, in turn, contacted the telegrapher at East Cabin. Carrier denies knowledge that any calls were made in this manner on those dates.

The Employees assert that the telephone call in claim No. 3 was made to the East Cabin telegrapher direct. Carrier says it does not know whether such a call was made.

Both parties submit material in their rebuttal statements which must be disregarded because it does not meet the requirements of the Board's procedures as set out in Circular No. 1.

A fair analysis of the record convinces us that the Carrier, for defense against the claims, relies chiefly on the proposition that the Employees have not proved their case.

No citation of authority is necessary to support the well established rule that the burden of proving all essential elements of a claim rests with the Petitioner. To meet this requirement here the Employees must have established by competent, admissible evidence, presented to the Carrier during handling on the property and made a part of the dispute, that:

- (1) The Carrier required communication of the type involved as a condition precedent to movement of the trains;
- (2) That the telephone calls were made as asserted;
- (3) That as a result the trains moved at a particular time; and,
- (4) That the agreement between the parties reserves the work of making these particular telephone calls to the petitioning employees.

The Employees have not met their burden. Much of their position is mere assertion without proof. And since the Carrier specifically denies some of the assertions, the failure of proof is fatal. The claims accordingly must be denied.

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 no proof of Agreement violation is shown.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1966.