

Award No. 15469
Docket No. TE-12787

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Hamilton, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Illinois Central Railroad, that:

CLAIM NO. 1

1. The Carrier violated the terms of an Agreement between the parties hereto at Waggoner, Illinois, when on June 3, 1960, it permitted or required Brakeman Evoy on Extra 9383 South to call Train Dispatcher Simcox at Champaign, Illinois on the telephone in connection with the movement of his train over the Clinton District, in the absence of an emergency.

2. The Carrier shall, because of the violation set forth in Item 1 of this Statement of Claim, compensate the senior idle extra telegrapher a day's pay at the minimum rate of the Division. The identification of the senior idle extra telegrapher to be furnished by the Carrier.

CLAIM NO. 2

1. The Carrier violated the terms of an Agreement between the parties hereto when on June 22, 23, 24, 25 and 26, 1960, it permitted or required train service employes, and/or other employes not covered by the Telegraphers' Agreement, at Avenue, Clinton Roundhouse, Ospur, Lake Fork, Mt. Pulaski, Avenue Yard, Litchfield, Winston Tower, to call Train Dispatcher Simcox and/or other train dispatchers at Champaign, Illinois on the telephone in connection with the movement of trains in the absence of an emergency, including the transmission of messages of record in connection therewith.

2. The Carrier shall, because of the violations set forth in Item 1 of this Statement of Claim, compensate the senior idle extra telegrapher a day's pay at the minimum rate of the Division for each date upon which the violations occurred. The identification of the senior idle extra telegrapher to be furnished by the Carrier.

CLAIM NO. 3

1. The Carrier violated the terms of an Agreement between the parties hereto at Litchfield, Illinois, when on June 3, 1960, it permitted or required Brakeman Evoy on Extra 9383 South to call Train Dispatcher Simcox at Champaign, Illinois on the telephone in connection with the movement of his train over the Clinton District, in the absence of an emergency.

2. The Carrier shall, because of the violations set forth in Item 1 of this Statement of Claim, compensate the senior idle extra telegrapher a day's pay at the minimum rate of the Division. The identification of the senior idle extra telegrapher to be furnished by the Carrier.

CLAIM NO. 4

1. The Carrier violated the terms of an Agreement between the parties hereto at Litchfield, Illinois, when on June 3, 1960, it permitted or required Brakeman Evoy on Extra 9383 South to call Train Dispatcher Simcox at Champaign, Illinois, on the telephone in connection with the movement of his train over the Clinton District, in the absence of an emergency.

2. The Carrier shall, because of the violation set forth in Item 1 of this Statement of Claim, compensate the senior idle extra telegrapher a day's pay at the minimum rate of the Division. The identification of the senior idle extra telegrapher to be furnished by the Carrier.

CLAIM NO. 5

1. The Carrier violated the terms of an Agreement between the parties hereto at Waggoner, Illinois, when on June 2, 1960, it permitted or required Brakeman Barclay on Extra 8901 South (No. 69) to call Train Dispatcher Simcox at Champaign, Illinois, on the telephone in connection with the movement of his train over the Clinton District, in the absence of an emergency.

2. The Carrier shall, because of the violation set forth in Item 1 of this Statement of Claim, compensate the senior idle extra telegrapher a day's pay at the minimum rate of the Division. The identification of the senior idle extra telegrapher to be furnished by the Carrier.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute, effective June 1, 1951, and as otherwise amended.

The facts in Claim No. 1 are: At 5:32 P. M., June 3, 1960, Brakeman Evoy, on Extra 9383 South, at Waggoner, Illinois, called Train Dispatcher Simcox at Champaign, Illinois on the telephone and transmitted to him and received from him the following information in connection with the movement of his train over the Clinton District:

"Where is No. 63 and No. 62?"

"Brakeman: Can you give us any help?

Dispatcher: Nos. 62 and 63 still meet at Mt. Olive.

Brakeman: Will No. 62 head in?

Dispatcher: Yes; No. 62 will be at Mt. Olive about 6:45 P. M.
and No. 63 will be at Mt. Olive at about 7:00 P. M."

CLAIM NO. 4

The brakeman on Train Extra 9383 South allegedly called the dispatcher by telephone at 6:25 P. M., on June 3, 1960, from Litchfield, Illinois, and the following conversation is supposed to have occurred:

"Brakeman: Will it be OK if we go to Mt. Olive to meet No. 62
and then go to Alhambra ahead of No. 63?

Dispatcher: Yes."

CLAIM NO. 5

The brakeman on Train Extra 8901 South (No. 69) allegedly called the dispatcher by telephone on June 2, 1960, from Waggoner, Illinois, and the following conversation is supposed to have taken place:

"Brakeman: We need water on one engine, and when No. 62 goes
we'll go back to Farmersville and water it.

Dispatcher: You had better go back now. No. 62 just set out
a hot box at Alhambra, and he should be leaving there soon."

The Telegraphers, on the property, merely cited the above alleged telephone conversations and messages, and then bluntly asserted, without any supporting evidence or argument, that their agreement was violated. They claim a day's pay for the senior idle extra telegrapher in each instance. Carrier denied the claims because no agreement violation occurred—the conversations and the yardmaster's message were not matters of record or in connection with the movement of trains within the meaning of the terms of the agreement.

Carrier's Exhibit A is a sketch of the territory involved—Clinton, Illinois to East St. Louis, Illinois—showing the various stations where telegraphers are and are not employed. Exhibits B through F are copies of all relevant correspondence exchanged between the Manager of Personnel and the General Chairman relative to these disputes. Exhibit B is a copy of the Carrier's Operating Rules.

The agreement between the parties, effective June 1, 1951, as revised December 1, 1956, is by reference made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: The claims involved in this dispute center around telephone calls which the Organization alleges deprived the telegraphers of the right to perform communication service. In arguing the case, the employees have divided the claims into two specific groups. The first

group involves cases where a train service employe communicated with a train dispatcher concerning matters that affected his train and its movement. They urge that Rule 4 (c) directly controls. The second group involves cases where no train service employe was involved. It is argued that the Scope Rule and its interpretations control in these instances.

Rule 4 (c) is quoted for reference herein:

"It is agreed that train and/or engine service employes will not be required or permitted to call dispatchers on telephone in connection with train movement or take train orders over the telephone, except in case of casualty or accident, engine failure, wreck, obstruction on track through collision, failure of block signals, washouts, tornadoes, storms, slides, or unusual delay due to hot box or break-in-two that could not have been anticipated by dispatcher when train was at previous telegraph office, which would result in serious delay to traffic.

NOTE: It is understood that an inquiry about the time of another train is not in conflict with this agreement unless used in connection with train movement."

It would appear that this rule is somewhat different from the usual rules cited in cases of this nature. The rule seems to be quite clear and we are only cited one instance where it has been interpreted by this Board. Award 13689 sustained a claim wherein a communication was made from a conductor to a dispatcher. The Referee in that case apparently felt that the rule clearly prohibited the type of communication involved in that case. It is also significant to note that the precedent established by that case provided for compensation of the senior idle extra operator for a day's pay at the minimum rate of the division.

We are firmly committed to the doctrine of stare decisis, when the same is ascertainable. It would appear that since Award 13689 is the only clear case presented as interpreting Rule 4 (c) of this agreement, we should give it full force and effect where it is applicable to the claims cited in this dispute.

Because the Organization has filed a number of claims in this Docket, we think it appropriate to rule on each one of them individually.

CLAIM NO. 1

A brakeman called a train dispatcher and asked for and received information relating to the movement of two trains. We are of the opinion that Award 13689 requires that this claim be sustained.

CLAIM NO. 2

This claim involves a number of incidents on five separate dates. However, the Organization has requested compensation for the senior idle extra telegrapher at a "day's pay at the minimum rate of the division for each date upon which the violations occurred." Therefore, it would appear that if the Organization sustains the burden of proving a violation on a specific

date, then the claim should be sustained. A separate claim for other violations on that particular date would be merely cumulative in nature, and certainly would not give rise to another claim for compensation under the prayer for relief made by the Organization in Claim No. 2.

On June 22, 1960, a conductor called a train dispatcher and received authority to move his train against the current of traffic.

On June 23, 1960, a brakeman called the train dispatcher concerning the movement of both his and another train.

On June 24, 1960, a conductor called a dispatcher and received information about another train which was used in connection with his train movement.

On June 25, 1960, a brakeman called a dispatcher in connection with a train movement.

On June 26, 1960, a conductor called the dispatcher, both giving and receiving information in connection with his train movement.

It would appear that Award 13689 is applicable to each of the instances above cited, and, therefore, Claim No. 2 will be sustained.

CLAIM NO. 3

This claim will be dismissed, as it involves a single incident which is also complained of in Claim No. 4.

CLAIM NO. 4

This claim involves the call by a brakeman to the dispatcher concerning authority on the movement of his train. Award 13689 appears to control in this claim, and it will be sustained.

CLAIM NO. 5

A brakeman called the dispatcher and received information in connection with his train. This claim will be sustained on the basis of Award 13689.

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 Agreement was violated.

AWARD

Claim No. 1 — sustained.

Claim No. 2 — sustained in accordance with Opinion and Findings.

Claim No. 3 — dismissed.

Claim No. 4 — sustained.

Claim No. 5 — sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of April 1967.