



Award No. 15719
Docket No. TE-14629

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad Company, that:

1. Carrier violated the Agreement between the parties when on October 20, 1962, it required or permitted a member of the crew of Train No. 92, a person not covered by the Agreement, to handle Train Order No. 44 at Montrose, Kansas (a place where no telegrapher is employed) by means of radio from Belleville, Kansas.
2. Carrier shall be required to compensate R. E. Babcock one day's pay for October 20, 1962, as provided in Memorandum No. 27 of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective August 1, 1947 (reprinted to include Interpretations and Special Agreements to November 1, 1956), as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Montrose, Kansas, located 26 miles west of Belleville, Kansas, is station where no telegrapher is employed. Belleville is a continuously operated yard and telegraph train order office and is equipped with radio.

Train No. 92 at time of this claim was a regularly scheduled freight train operating between sub-division point Phillipsburg, Kansas and subdivision point Belleville, Kansas, due to leave Phillipsburg 7:13 P.M. and arrive Belleville 9:40 P.M. daily.

When train No. 92 reached Montrose on October 20, 1962, it was considered that this train did not have ample time on this schedule to reach Belleville before losing both right and schedule as provided in Carrier's Operating Rule No. 82. The dispatchers' telephone circuit was out of order between Belleville and Phillipsburg. The train dispatcher issued train order No. 44 to the telegrapher on duty at Belleville to relay to the crew of train No. 92 at Montrose via radio. The telegrapher at Belleville relayed the train order as instructed.

is handled at the same location in any consecutive eight (8) hour period. This subsection 1 does not apply to train orders delivered by one train to another at points where telegraphers are not employed."

4. Mediation Agreement A-560, dated February 16, 1939, reads in part as follows:

"NOTE: Emergency is defined as follows: Storms, fogs, casualties, accidents; obstructions caused by wrecks, wash-outs, high water, slides and snow blockades; unusual delay due to failure of fixed signal to clear; unusual delay to trains due to hot boxes, engine or other equipment failures, and break-in-twos, or other unforeseen situations where life or property may be in jeopardy, requiring immediate attention, which could not have been anticipated when train was at previous telegraph office and which would result in serious delay to trains."

5. The Organization's position on the property is shown in letters dated December 3, 1962 and March 8, 1963, addressed to Carrier's Vice President-Personnel. (Carrier's Exhibits A and C).

6. The Carrier's position is shown in its letter dated January 23, 1963 addressed to General Chairman Christian of the Order of Railroad Telegraphers. (Carrier's Exhibit B.)

(Exhibits not reproduced.)

OPINION OF BOARD: This case must be decided upon the basis of contractual interpretation. Memorandum No. 27, which supplements Rule 24 of the Agreement of the Parties, and Mediation Agreement — Case A-560, apply directly to the issues in this Claim. It is not necessary to quote the provisions set forth in the memorandum and Mediation Agreement, except it is deemed important to cite a portion of Case A-560:

"NOTE: Emergency is defined as follows: Storms, fogs, casualties, accidents; obstructions caused by wrecks, wash-outs, high water, slides and snow blockades; unusual delay due to failure of fixed signal to clear; unusual delay to trains due to hot boxes, engine or other equipment failures, and break-in-twos, or other unforeseen situations where life or property may be in jeopardy, requiring immediate attention, which could not have been anticipated when train was at previous telegraph office and which would result in serious delay to trains."

Since the parties themselves have explicitly agreed upon a definition of the word "emergency" in regard to handling train orders, their definition is binding upon us.

In the handling of this dispute on the property, the Carrier was unable to present any evidence that it was entitled to the benefit of any of the exceptions which would justify its action because of the existence of an "emergency."

The record does not show the cause for the delay experienced by Train No. 92, nor any information as to the nature of the commodities being transported, nor other possibly pertinent facts, e.g., weather conditions. We are not entitled at this appellate level to speculate that an emergency must have existed because of the action taken by Carrier, keeping in mind that the parties have clearly defined what happenings are to be considered emergencies. This being true, Memorandum No. 27, which supplements Rule 24, and Mediation Agreement — Case A-560, govern the facts of record in this particular case; and, when applied thereto, dictate an affirmative award.

This decision is based on a specific agreement, a mutually agreed upon definition of a word, and consequently has limited usefulness as a precedent in resolving other claims. It may be helpful in emphasizing the fact that panel argumentation, however persuasive and reasonable, can not be an acceptable substitute for facts not presented by the parties on the property and there made a matter of written record.

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 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.