



Award No. 15737
Docket No. TE-15275

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Thomas J. Kenan, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Railroad (Gulf District), that:

CLAIM NO. 1

1. Carrier violated the Telegraphers' Agreement when, on the 15th day of November, 1963, it required and permitted Dispatcher W. W. Edmiston to transmit a message of "control of transportation" to the telegrapher at Taylor, Texas.

2. Carrier shall compensate the senior idle telegrapher (extra in preference) 8 hours at the pro rata prevailing telegrapher's rate of pay for this violation.

3. Carrier violated the Telegraphers' Agreement when, on the 18th day of November, 1963, it required and permitted Dispatcher R. P. Bailey to transmit a message of "control of transportation" to the telegrapher at Taylor, Texas.

4. Carrier shall compensate the senior idle telegrapher (extra in preference) 8 hours at the pro rata prevailing telegrapher's rate of pay for this violation.

5. Carrier violated the Telegraphers' Agreement when, on the 17th day of November, 1963, it required and permitted Dispatcher V. E. Davidson to transmit a message of "control of transportation" to the telegrapher at Mart, Texas.

6. Carrier shall compensate the senior idle telegrapher (extra in preference) 8 hours at the pro rata prevailing telegrapher's rate of pay for this violation.

CLAIM NO. 2

1. Carrier violated the Telegraphers' Agreement when, on the 20th day of November, 1963, it required and permitted Dispatcher W. W. Edmiston to transmit a message of "control of transportation" to the telegrapher at Milano, Texas.

2. Carrier shall compensate the senior idle telegrapher, extra in preference, 8 hours at the pro rata prevailing telegrapher's rate of pay.

3. Carrier violated the Telegraphers' Agreement when, on the 22nd day of November, 1963 it required and permitted Dispatcher W. W. Edmiston to transmit a message of "control of transportation" to the telegrapher at Taylor, Texas.

4. Carrier shall compensate the senior idle telegrapher, extra in preference, 8 hours at the pro rata prevailing telegrapher's rate of pay.

CLAIM NO. 3

1. Carrier violated the Telegraphers' Agreement when, on the 1st day of December, 1963, it required and permitted Dispatcher V. E. Davidson at Palestine, Texas, to transmit a message of "control of transportation" to the Telegrapher at Crockett, Texas.

2. Carrier shall compensate the senior idle telegrapher, extra in preference, 8 hours at the pro rata prevailing telegrapher's rate of pay for this violation.

3. Carrier violated the Telegraphers' Agreement, when on the 2nd day of December, 1963, it required and permitted Dispatcher R. P. Bailey at Palestine, Texas, to transmit a message of "control of transportation" to the Telegrapher at Milano, Texas.

4. Carrier shall compensate the senior idle telegrapher, extra in preference, 8 hours at the pro rata prevailing telegraphers' rate of pay for this violation.

5. Carrier violated the Telegraphers' Agreement when, on the 2nd day of December, 1963, it required and permitted Division Trainmaster G. P. Sowell at Palestine, Texas, to transmit a message of "control of transportation" to the Telegrapher at Taylor, Texas.

6. Carrier shall compensate the senior idle telegrapher, extra in preference, 8 hours at the pro rata prevailing telegrapher's rate of pay for this violation.

CLAIM NO. 4

1. Carrier violated the Telegraphers' Agreement when, on the 9th day of December, 1963, it required and permitted Dispatcher R. P. Bailey to transmit a message of "control of transportation" to the telegrapher at Taylor, Texas.

2. Carrier shall compensate the senior idle telegrapher (extra in preference) 8 hours at the pro rata prevailing telegrapher's rate of pay for this violation.

3. Carrier violated the Telegraphers' Agreement when, on the 17th day of December, 1963, it required and permitted Dispatcher W. H. McDonald to transmit a message of "control of transportation" to the telegrapher at Taylor, Texas.

4. Carrier shall compensate the senior idle telegrapher (extra in preference) 8 hours at the pro rata prevailing telegraphers' rate of pay for this violation.

CLAIM NO. 5

1. Carrier violated the Telegraphers' Agreement when, on the 5th day of January, 1964, it required and permitted Dispatcher J. H. Bradley to transmit a message of "control of transportation" to the telegrapher at Taylor, Texas.

2. Carrier shall compensate the senior idle telegrapher (extra in preference) 8 hours at the pro rata prevailing telegraphers' rate of pay for this violation.

CLAIM NO. 6

1. Carrier violated the Telegraphers' Agreement when, on the 16th day of January, 1964, it required and permitted Dispatcher R. P. Bailey to transmit a message of "control of transportation" to the telegrapher at Taylor, Texas.

2. Carrier shall compensate the senior idle telegrapher (extra in preference) 8 hours at the pro rata rate prevailing telegrapher's rate of pay for this violation.

3. Carrier violated the Telegraphers' Agreement when, on the 12th day of January, 1964, it required and permitted Dispatcher J. H. Bradley to transmit a message of "control of transportation" to the telegrapher at Taylor, Texas.

4. Carrier shall compensate the senior idle telegrapher (extra in preference) 8 hours at the pro rata prevailing telegrapher's rate of pay for this violation.

CLAIM NO. 7

1. The Carrier permitted the violation of the Telegraphers' Agreement when the dispatcher on duty November 25, 1963, 3:00 A.M. to transmit the message quoted below which concerned the control of transportation (see Award 21, Special Board of Adjustment No. 506, Claims 2, 4, and part of Claim 3), thus opening an office of communication in the dispatcher's office at Houston, Texas.

2. "Houston, Texas Nov. 25, 1963

C&E No. 81 - DeQuincy.

Pick up at Mauriceville off No. 3 track three cotton for Beaumont. Pick up at Mauriceville Engine 1250 handle dead-intow to Settegast. No. 80 left at Mauriceville Eng 1053 stays at Mauriceville. Pick up at Beaumont 25 cars off No. 3 track Beaumont Yard.

/s/ JCB-3 AM"

3. The Carrier shall compensate the senior idle telegrapher, extra in preference, for this violation 8 hours at \$2.53 per hour, total \$20.24. As to claimant, please refer to Awards 16, 17 and 19, Special Board of Adjustment No. 506.

EMPLOYEES' STATEMENT OF FACTS: The claims in these seven cases involve identical violations in principle. They pertain to train dispatchers transmitting communications direct to telegraphers, affecting the operation of trains. The location of the dispatcher is in Palestine, Texas. In the adjoining office to the dispatcher's office at Palestine, Texas is H Office, manned by telegraphers for the express purpose of handling communications. In each of the seven claims, the dispatcher directly transmitted to telegraphers at various locations messages which properly should have been handled by telegraphers, and is work that has been reserved under the Scope Rule of their Agreement.

Claims were made in each instance for the violations and appealed to the highest officer designated to handle claims or grievances, and declined by him. The claims are now properly before your Board for final adjudication.

CARRIER'S STATEMENT OF FACTS:

1. There is an agreement between the parties effective March 1, 1952, on file with your Board, which by reference is hereby made a part of this submission.

2. The seven (7) claims in this Docket are based upon the erroneous presumption of the Employees that the agreement was violated because train dispatchers at Houston and Palestine, Texas telephoned certain work instructions to telegraphers to be delivered to train crews by the telegraphers at points on the Gulf District where the work was to be performed. The facts which we shall relate will conclusively show that these communications were not formal train orders governing the movement of trains as the Employees would lead your Board to believe. We will show that all communications involved in this dispute were instructions and information concerning work to be performed of which a record was not required to be made by law, governmental regulations or Carrier's rules and instructions.

3. Before setting forth the facts in each of these claims, we respectfully direct your Board's attention to the following:

- (a) a telegrapher participated in each communication here forming the basis for the claims; and
- (b) all claims herein presented are for an unnamed claimant; therefore, failing completely to comply with the August 21, 1954 Agreement.

telegrapher, extra in preference' does not meet this requirement, see Third Division Award 11754. Therefore, claim is barred from consideration.

Without prejudice to Carrier's position expressed above, the facts in connection with this claim are as follows: The dispatcher at Houston telephoned work instructions to the telegrapher on duty at DeQuincy for No. 81 at DeQuincy. The instructions involved picking up of cars and a diesel engine at Mauriceville and some cars at Beaumont. The telephone conversation here in dispute involved work instructions for a conductor which the telegrapher at DeQuincy reduced to writing as you have quoted in your Statement of Claim. Such instructions could have been given to the conductor direct, and would not have been a violation of the Telegraphers' Agreement.

It is the responsibility of the dispatcher to issue work instructions, train orders, or any other information that may affect the safety and movement of a train. The dispatcher is not restricted in the use of the telephone to carry out his responsibility. The work instructions issued by the dispatcher which is here in dispute is not a violation of the Telegraphers' Agreement; therefore, claim is without rule support, and is hereby declined.

Yours truly,

/s/ B. W. Smith"

5. Train Dispatchers are primarily responsible for the movement of trains by train orders; to supervise forces employed in the handling of train orders; to keep necessary records incident thereto; and perform related work. Train dispatchers have a telephone circuit which enables them to talk to any telegrapher on duty on his territory, and this is the way in which train orders, work instructions, information, or any other communications are transmitted from a train dispatcher to a telegrapher or vice versa.

The method and form of train orders used to govern movement of trains are covered in the Carrier's Uniform Code of Operating Rules which do not conflict with any rule of the Telegraphers' Agreement. There are no Carrier rules pertaining to work instructions such as arise many times during a dispatcher's tour of duty which is his responsibility along with the telegrapher receiving such instructions.

Work instructions such as those set forth hereinabove are directed by train dispatchers to telegraphers all over the railroad at all hours of the day and night when necessary. Such communications are not normally transmitted through relay offices, but are generally handled directly over the dispatcher's circuit to telegraphers at the point where such instructions are to be delivered.

OPINION OF BOARD: This award covers several claims, all involving instances of a train dispatcher's transmitting communications directly to a telegrapher at another station rather than utilizing a telegrapher then on duty at the dispatcher's station. All of the communications related to the picking up or the leaving of cars at stated stations. One of the communications, illustrative of all, is as follows:

"Palestine Nov. 22, 1963
Condr No. 142 Taylor

Pick up at Valley Jct 12-20-1348 in No. 7 track and
12-0-1144 in No. 8 track.

MHC . . . 1046 PM."

The Employes contend that while none of the communications was a "train order", each was a message relating to the control of transportation and of the type of which a record should be kept. The Employes contend, and this Board agrees, that if the communications were of this nature, they fall within the scope of Rule 1 of their Agreement with the Carrier. See Award Nos. 5181 (Boyd), 5182 (Boyd) and No. 21, Special Board of Adjustment No. 506 (Ray).

The Carrier contends, among other things, that the communications were not of the type of which records are required to be kept. The Employes offer no proof on this point, but rely upon the principle of *stare decisis*, citing an award handed down on this property in Award No. 21, Special Board of Adjustment No. 506 (Ray). In such award, it was held that the following message, sent by a train dispatcher to a telegrapher at a distant station, related to the control of transportation and was of the kind of which a record should be made:

"Leave the 13 beans in your train at Port Barre and pick up the grain and beans at Port Barre now and move to Anchorage, . . . 58 cars. . . ."

This Board has difficulty in considering itself bound in the instant dispute by Award No. 21, Special Board of Adjustment No. 506. First, in that award the Special Board of Adjustment was able to find that the message was "of the kind of which a record should be made." In the instant dispute, this essential element of the Employes' case is contested, and no proof to establish it has been advanced by the Employes. Second, this Board, in Award No. 5182 (Boyd), was presented with the transmission and receiving of messages similar to those of this dispute (although neither the transmitter nor, apparently, even the receiver of the messages was a person covered by the Telegraphers' Agreement), and the claims were denied for a failure of proof establishing that the messages were of the type that should be made a matter of record.

For failure of the Employes to carry their burden of proving every element of the claims, the claims 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 the claims were not proved to violate the Agreement.

AWARD

Claims denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1967.

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15