

Award No. 15934
Docket No. TE-14827

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

GRAND TRUNK WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Grand Trunk Western Railroad, that:

1. Carrier violated the terms of an Agreement between the parties hereto when on April 17, 1963 it permitted or required Conductor Russell, an employe not covered by said Agreement at Gaines, Michigan, to copy a message affecting the movement of his train over the telephone from the train dispatcher at Durand, Michigan.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, compensate K. L. Fisher, idle on his rest day, a day's pay at the rest day rate.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Grand Trunk Western Railroad Company, hereinafter referred to as Carrier, and its employes represented by The Order of Railroad Telegraphers, hereinafter referred to as Employes or Organization, effective November 1, 1955, and as amended. Copies of said Agreement are, as required by law, assumed to be on file with this Board, and are, by this reference, made a part hereof.

At page 56 of said Agreement (Addendum No. 1) is listed the position existing at Gaines, Michigan, the locale of the dispute involved in this claim, as of the effective date of said Agreement. The listing, for ready reference, reads:

Station	Position	Rate Per Hour
Gaines	Agent-Operator	\$1.829

At a time and date not shown in the record, centralized traffic control was installed between Durand and West Pontiac, Michigan. Gaines is located within this centralized traffic control territory, approximately four (4) rail miles from Durand.

Will you please advise.

Yours very truly,

/s/ L. H. Freeman
L. H. Freeman
General Chairman

LHF:rc"

to which the Vice President and General Manager replied:

"GRAND TRUNK WESTERN RAILROAD COMPANY

Detroit 26, Michigan
September 12, 1963

Our File: 8315-1(194)
Your File: 300-193

Mr. L. H. Freeman, General Chairman
The Order of Railroad Telegraphers
156 St. Denis Avenue
St. Lambert, Quebec, Canada

Dear Sir:

Please refer to your letter of September 5, 1963, regarding claim of Telegraph Operator, K. L. Fisher, for April 17, 1963, because Conductor Russell allegedly copied a train order at Gaines, Michigan.

This claim has been previously declined in my letter of June 27, 1963, and the case was reviewed by you and Mr. W. W. Byam in conference July 18 following which my declination was reaffirmed. I have reviewed your September 5 letter, but do not feel any change is warranted in the position of the carrier in this matter as previously outlined to you.

Yours very truly,

/s/ H. A. Sanders"

* * * * *

Copies of the Telegraphers' Working Agreement which became effective on this property on November 1, 1955, are on file with the Third Division.

OPINION OF BOARD: The Organization contends that a message related to the yard crew which was written down and repeated back to the dispatcher was a train order within the contemplation of Rule 15. On the property, Carrier established that for many years such messages, though not written down, had not been treated as train orders, but, instead, as "track and time messages."

This Board has previously drawn a distinction between train orders and "track and time messages." See Award 14028 (Hamilton).

The issue here is the narrow one of whether or not reducing the "track and time message" to writing and "reading it back" made it a train order.

We think it does not. The common sense rule is, and should be, that the substance, and not the form, controls. Therefore, where the treatment of such messages on the property was that same were not train orders, the mere reducing same to writing and "reading them back" would not then make them train orders and, accordingly, the claim in this case is 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 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1967.