

Award No. 16011
Docket No. TE-14951

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

TENNESSEE CENTRAL RAILWAY COMPANY

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

1. Carrier violated the Agreement between The Order of Railroad Telegraphers (Organization) and the Tennessee Central Railway Company (Carrier) when on February 21, 1963, after permitting train No. 81 to pass train order office at Lebanon, Tennessee without orders which would permit train No. 81 to move to Shops for train No. 84, knowing that train No. 84 was not called until 7:15 A. M.; and the train dispatcher issued train order No. 1 and caused and/or permitted Section Foreman Mr. Duke at Mt. Juliet to copy this order and make delivery of the order to train No. 81 at Stone River and order No. 1 which was made complete at 6:41 A. M.

2. Carrier again violated the Agreement when on March 1, 1963, Carrier's train dispatcher caused and/or permitted the conductor on train No. 81 (Conductor McDonald) to stop at Lebanon, Tennessee and come to the telephone and copy train order No. 1 which was made complete at 6:04 A. M., March 1, 1963.

3. Carrier again violated the Agreement when on March 15, 1963, it caused and/or permitted the conductor on train No. 81 to come to the telephone at the rock crusher at Martha, Tennessee and copy train order No. 2 which was made complete at 6:09 A. M., March 15, 1963.

4. The Carrier shall compensate W. H. Wiggerman for one (1) call February 21, 1963, one (1) call March 1, 1963, and one (1) call March 15, 1963, two hours at the overtime (1½) rate on each of the above mentioned dates in addition to the amount paid for the eight (8) hours' work on each of the above mentioned dates.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Tennessee Central Railway Company, hereinafter referred to as Carrier, and its employees in the Telegraphers' class, hereinafter referred to as Organization or Employees, effective May 1, 1924 and as amended. Copies of said Agreement are, as provided by law, assumed to be on file with this Board and are, by this reference, made a part hereof.

not, we would like to have your permission to appeal this for further handling.

Respectfully yours,

/s/ E. W. Eatherly
E. W. Eatherly
General Chairman"

Correspondence reflecting handling given this claim on the property is appended marked Carrier's Exhibits 2 to 8, inclusive.

(Exhibits not reproduced.)

OPINION OF BOARD: Rule 12 of the parties' agreement restricts the transmission and receipt of train orders or messages by telephone or telegraph to employees covered by the agreement "except in cases of emergency."

On February 21, 1963, train No. 81, moving against superior train No. 84 received a train order, advancing its movement, which was received by a section foreman at Mt. Juliet, and by him delivered to No. 81 at Stone River. The necessity for this train order arose because of delay to a train making connection at Nashville with train No. 84.

On March 1, 1963, under similar circumstances No. 81 received a train order which was copied by its conductor at Lebanon.

On March 15, 1963, train No. 81, while engaged in picking up cars at Martha Crusher suffered an engine failure. When mechanical forces, dispatched from Nashville, had completed repairs, train No. 81 was not able to proceed against No. 84 without an additional train order. Such train order was received by telephone by the conductor.

Claims were filed for all three dates, as shown in the statement of claim, the Employees alleging violation of Rule 12 in each instance. The Carrier contended that the circumstances in all three cases constituted "emergencies," thus permitting the train orders to be received by employees other than telegraphers.

Examination and careful consideration of the record convinces us that the delays resulting in late departure of train No. 84 on February 21 and March 1, 1963, were simple operating exigencies, not amounting to emergencies within the intent of the rule. The claim for these two dates, therefore, must be sustained.

We are similarly convinced that if there had been no engine failure on train No. 81 on March 15, there would have been no necessity for the train order. It follows, therefore, that this train order did result from an emergency and its receipt by the conductor was permissible under the rule. The claim for this date must, therefore, be denied.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 to the extent indicated in the Opinion.

AWARD

Claim for February 21 and March 1, 1963, sustained; claim for March 15, 1963, denied; all in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1967.