



Award No. 16423

Docket No. TE-15049

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

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

**NEW YORK CENTRAL RAILROAD
(Southern District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central (Southern), that:

1. Carrier violated the Agreement, when on the 23rd day of March, 1962 it required or permitted Trainmaster Carl Marsh, an employee not covered by the Telegraphers' Agreement, to perform work of transmitting communication of record by telephone at Galion, Ohio.

2. Carrier shall compensate A. L. Lucas, agent-operator, headquarters Galion, Ohio, for one call, two hours, at time and one-half pro rata rate (regular rate \$2.608 per hour) for the violation set forth above. Total amount, \$7.82.

EMPLOYEES' STATEMENT OF FACTS: On Saturday, March 23, 1963, Mr. Carl Marsh, trainmaster at Galion, Ohio, transmitted to the train dispatcher at Springfield, Ohio a message moving three cars and giving the car numbers as well as the destination. Mr. Marsh is not covered by the Telegraphers' Agreement.

Claimant Agent-Operator A. L. Lucas is regularly assigned on the territory between Galion and Shelby, Ohio with regular assigned hours of 8:00 A. M. to 5:00 P. M. with one hour for lunch. His work week begins on Monday and his assigned rest days are Saturday and Sunday. Claimant Lucas was ready and available to perform the service at Galion on March 23, but was not called by the Carrier. Claim was made for a call payment to Claimant Lucas and appealed to the highest officer designated to handle claims and declined by him. Claim is now properly before your Board for final adjudication.

CARRIER'S STATEMENT OF FACTS: Claimant A. L. Lucas was regularly-assigned as Assistant Agent-Operator (Traveling Agent) on Ohio Route No. 4, serving the shippers between Crestline, Ohio, and New London, Ohio, inclusive, working five days per week Monday through Friday, hours 8:00 A. M.

to 5:00 P. M. — one hour for lunch. His headquarters was at Shelby, Ohio — not Galion, Ohio, as shown in Statement of Claim.

Seagram Distillers, an industry located on Carrier's line at Lawrenceburg, Indiana, moves with fair regularity carloads of alcohol between that point and its plant at Schenley. The shipper insists on prompt handling and protection of these cars to destination. These cars move to Galion, where they are usually handled by the Galion-West View Turnaround Switch Run to Crestline, Ohio, where they are interchanged to the Pennsylvania Railroad. On Friday, March 22, 1963, the industry billed three cars of alcohol — GATX 39347, GATX 39346, and GATX 35046 — to its plant at Schenley, Pennsylvania. The three cars moved to Galion on Saturday, March 23.

Since the Galion-West View Switch Run was not assigned to work on Sunday, March 24, it was imperative that the cars be placed in some other train out of Galion for Crestline on March 24, for Monday morning delivery by the Pennsylvania Railroad at Schenley.

Trainmaster C. L. Marsh instructed the Dispatcher at Springfield, Ohio, accordingly, and the cars moved out of Galion on Train BR-2 and were interchanged to the Pennsylvania Railroad at Crestline at 5:15 P. M. on March 24.

A Trainmaster, as a supervisory official of the Carrier, has the responsibility to supervise movement of traffic in a manner that will insure satisfaction to its patrons.

The instructions by Trainmaster Marsh to the Dispatcher comprise the basis for the claim progressed here, the Organization contending that this constituted a "communication of record" and Claimant A. L. Lucas should have been called to transmit these instructions.

OPINION OF BOARD: Organization alleges that Carrier violated the Agreement, when, on Saturday, March 23, 1967, Carrier's Trainmaster, an employe not covered by said Telegraphers' Agreement, while at Galion, Ohio, telephoned instructions to the dispatcher at Springfield, Ohio to move three cars from Galion to Crestline, Ohio for delivery by the Pennsylvania Railroad to Carrier's customer's plant at Schenley, Pennsylvania on the following Monday morning.

While there is no direct evidence in the record of the complete contents of the message or that the complete message was recorded, the parties indicate agreement in their correspondence that a message containing the numbers of three cars and their destination was in fact recorded.

Carrier's highest official designated to handle such matters denied the claim because the message was not a communication of record which affected the operation and movement of trains.

The sole issue before us, therefore, is whether this message was a communication of record which affected the operation and movement of trains. See Award 11939, 11986, 11987, 12388, 13081, 13957 and 14879.

For the subject message to be "a communication of record which affected the operation and movement of trains" it must meet the minimum standards

of (1) having been recorded and (2) having affected the operation and movement of trains.

In applying the first minimum standard we find no direct evidence that the subject message was recorded; however, the parties indicate agreement in their correspondence that a message containing the numbers of three cars and their destination was in fact recorded.

Thus, we must next determine whether this message containing the numbers of three cars and their destination affected the operation and movement of trains.

In this connection, the Organization argues that the instruction to the dispatcher from the Trainmaster was a communication of record directly affecting the operation and movement of trains because in such situation the dispatcher was merely executing the directive of a superior officer.

We cannot agree with Organization's contention in this particular case because as previously stated we only have evidence of a recorded message which gave three car numbers and their destination. Such message only relayed the information necessary for the Dispatcher to issue a message to some train to pick up the car and move it to its destination. The message issued later by the dispatcher affected the movement of the train and was a message of 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 not violated by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of June 1968.

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