

Award No. 16482
Docket No. TE-15214

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY
(Gulf District)

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. The Carrier violated the Telegraphers' Agreement, Scope Rule 1 and Rule 2(c), when it permitted Trainmaster G. C. Smith at Reeves, Louisiana, a blind siding, to open up an office of communication, copy and deliver train order No. 42 at 2:23 P. M., May 17, 1963.

2. The Carrier shall compensate Telegrapher R. J. Touchette in the amount of 8 hours at \$2.53 per hour, total of \$20.24 for this violation who should have been used to perform this required duties of a telegrapher.

CLAIM NO. 2

1. The Carrier violated the Telegraphers' Agreement of March 1, 1952 when it permitted the issuing and a member of train crew No. 95 to copy and deliver train order No. 66, July 27, 1963 at Elizabeth, Texas, a blind siding, at 11:52 P. M., Scope Rule 1 and Rule 2(c).

2. The Carrier shall compensate the idle senior telegrapher on this date eight (8) hours at \$2.53, total \$20.24 for this violation.

CLAIM NO. 3

1. The Carrier violated Rule 1 and Rule 2(c) of the Telegraphers' Agreement when, on the 10th day of November 1963, it required and permitted Conductor G. R. Robinson, a train service employe, to copy, receive and deliver train orders Nos. 216, 217 and 219 for Third 66 and Extra 477 North at Buda, Texas, a blind siding.

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

CLAIM NO. 4

1. Carrier violated Scope Rule 1 and Rule 2(c) of the Telegraphers' Agreement when, on the 21st day of November 1963, it required and permitted train service employes on Extra 726 North at Jetero, Texas (a blind siding), to receive, copy and deliver train order No. 35.

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

CLAIM NO. 5

1. Carrier violated Scope Rule 1 and Rule 2(c) of the Telegraphers' Agreement when, on the 22nd day of November 1963; it required and permitted train service employes to copy and deliver train order No. 40 at MA Siding (a blind siding) to train No. 140.

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

3. Carrier violated Scope Rule 1 and Rule 2(a) of the Telegraphers' Agreement when, on the 23rd day of November 1963, it required and permitted Conductor Hutchinson on train No. 141 to copy and deliver train order No. 21 at East Waco, Texas.

4. Carrier shall compensate Agent-Telegrapher J. T. Eady, one call, three hours at the prevailing pro rata rate applicable at this station.

EMPLOYEES' STATEMENT OF FACTS: All five claims in this docket concern the handling of train orders by other than telegraphers at what is known as a blind siding on various dates in 1963. Claim No. 1 occurred when Trainmaster G. C. Smith at Reeves, Louisiana, which is located 24.3 miles east of DeQuincy, Louisiana, contacted the train dispatcher at Houston, Texas from the phone booth at Reeves about 2:23 P. M. on May 17, 1963, and requested the time on No. 51. The dispatcher immediately issued Train Order No. 42 to Trainmaster Smith and agent-telegrapher at Elton, Louisiana, 21 miles east of Reeves. Trainmaster Smith repeated the order in the same manner as the telegrapher is required to do and as the agent at Elton also repeated the order to the dispatcher.

Claim No. 2 occurred at Elizabeth, Texas, which is located approximately 5 miles west of Beaumont, Texas. On July 27, 1963, a member of train crew No. 95 local freight came on the dispatcher's telephone and copied and delivered Train Order No. 66.

Claim No. 3 occurred at Buda, Texas, which is located 15 miles southwest of Austin, Texas, at 2:20 A. M. on November 10, 1963, when Conductor G. R. Robinson came on the dispatcher's telephone and informed the dispatcher that Agent-Telegrapher J. R. Hancock had been called and was there prepared to copy train orders for Third 66. The dispatcher informed Conductor

to make MA siding, was therefore necessary to get them orders to run as an Extra and was necessary to get Conductor on No. 140 on phone to give them this order. This inspection developed that had a draw bar 59 cars from head end. Order No. 40 in question was issued to Agent-Telegrapher Lingo at Mart to take to Otto to Extra 851 South (141's train) and at the same time give to the Conductor No. 140 at MA Siding. This order could have been sent to No. 140 at MA Siding from Marlin by the Agent but time that would have been consumed in doing this and to further safeguard the move and expedite the movement of the operation did give the order to Conductor No. 140 at MA Siding direct.

No. 141 out Ft. Worth November 22, 1963, Order No. 21 given Conductor Hutchinson at East Waco 5:40 A. M. giving this train right over No. 140 to Mart. No. 141 was delayed Maypearl 1 hour and 25 minutes account broken knuckle, further delayed Waco 1 hour and 45 minutes account two broken knuckles. Dispatcher did not know where No. 141 was and did try to get agent-telegrapher T. J. Eady, Waco on long distance but unable to contact him, this was to try to locate this train. When the Conductor came in on phone at East Waco advised the dispatcher of the whereabouts, he did give them order No. 21 as stated.

In view of the foregoing an emergency existed in each instance, therefore claims as presented are respectfully declined.

Yours truly,

/s/ V. G. Dyer"

NOTE: In the paragraph prior to the paragraph giving the decision, the Superintendent erroneously stated the date to be November 22, 1963. The correct date of the claim is November 23, 1963, which is the date Order No. 21 was issued to Conductor Hutchinson at East Waco.

OPINION OF BOARD: This dispute consists of five claims covering six instances of alleged agreement violation.

In Claim No. 1 the Employees allege that a Trainmaster, operating a highway-rail car, contacted the train dispatcher, copied and delivered a train order when no emergency existed, thereby violating the scope rule and Rule 2(c) of the Telegraphers' agreement. Carrier contends that no train order was copied by the Trainmaster, and that he merely asked for information about a specific train. The ensuing debate between the parties did not resolve the conflict concerning what actually happened.

In the remaining claims train orders were copied by train service employees. In each case the necessity for such train orders arose because of delays brought about by engine failure, break-in-two, and a wreck, all of which are described as emergencies in Rule 2(c). Under such conditions the rule excuses the Carrier from using telegraphers to perform the train order work. The Employees contend, however, that in most of the instances the need for train orders arose not because of the emergencies, but because of poor train dispatching; also, that the emergencies did not primarily affect the trains whose

crews copied the orders. There is also a contention by the Employees that in one instance an off duty telegrapher was called and reported, but was not used to handle the necessary train orders. Carrier denies this. The Employees responded by alleging that they had a statement which would substantiate their contention. This statement, however, was not produced either in handling on the property or in the submission to the Board.

A host of our awards has held that the burden is upon the Petitioner to support its assertions with competent evidence. Here, the Employees' entire case rests upon assertions, allegations and argument which are not supported by any evidence that would tend to overcome the Carrier's defenses. Since the Employees have failed to sustain their burden of proof, 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 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 shown to have been violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July 1968.