



Award No. 16487
Docket No. TE-15585

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on the Chicago Great Western Railway, that:

1. Carrier violated the Agreement between the parties when on November 28, 1963 (holiday), it declared the first shift telegrapher-clerk position at Fair Ground, Iowa to be blanked and transferred the work of the position to a person not covered by the Agreement.
2. Because of this violation, Carrier shall compensate L. S. Hickie, first shift telegrapher-clerk at Fair Ground, a day's pay of eight (8) hours at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective June 1, 1948 (reprinted May 1, 1958), as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Fair Ground, Iowa (located on the western edge of Dubuque, Iowa) is a station on the Eastern Division, Chicago District of the Carrier's lines, 71.6 miles east of Oelwein, Iowa and 174.2 miles west of Chicago, Illinois. There are two telegrapher-clerk positions at Fair Ground. Both are seven-day positions with rest day relief by a Regular Relief Employee as a part of a Regular Relief Position.

The hours of assignment of the first shift position at Fair Ground are 5:00 A. M. to 1:00 P. M., and the second shift 4:00 P. M. to midnight. The rest days of the first shift position are Sunday and Monday and the rest days of the second shift position are Tuesday and Wednesday. L. S. Hickie (Claimant in this dispute) is assigned to the first shift position, E. A. Otting to the second shift and E. T. Healey to the relief position.

Prior to about July 1, 1953, Carrier maintained around-the-clock telegrapher service at Fair Ground. On or about that date Carrier, coincident with the abolishment of one shift, commenced using employees and/or persons not covered by the Agreement to perform work accruing to its telegraphers

East Cabin is the designation of a telegraph office (3.3 miles east of Fair Ground and within the station and yard limits of Dubuque) located on a segment of CTC trackage used jointly by the Great Western and Illinois Central railways between Dubuque Junction, Iowa, and Portage, Illinois.

Records show that No. 92, eastbound second class train, enroute from Oelwein, Iowa, to Chicago, Illinois, arrived Fair Ground 8:09 A. M. and departed 8:14 A. M., November 28, 1963. The alleged "lineup" referred to by claimant was actually a telephone conversation between conductor of Train 192 at Fair Ground and joint CGW-IC telegrapher at East Cabin. Access to and movement over joint trackage between Dubuque Junction and Portage is governed by signal indication — no messages, block cards, etc., are received or required. In other words, the instant claim is based solely on contention that the conductor violated the effective Agreement when he called joint telegrapher at East Cabin on Dubuque city telephone in order to determine whether Train 192 could move onto joint trackage without delay and thus avoid blocking downtown street crossings.

Claim for two hour call was declined by Carrier's Chief Dispatcher in letter reading:

"CHICAGO GREAT WESTERN RAILWAY COMPANY

Oelwein, Iowa
December 5, 1963

Mr. L. S. Hickie
Telegrapher
Fairground, Iowa

Your time slip No. 20, dated November 28, 1963, claiming two hour call at the time and one-half rate.

Contrary to contention contained in your time claim, no lineup was required and none was copied. The facts are that Conductor merely called East Cabin in accordance with the long-established practice to avoid delay in movement of 192 over the Illinois Central.

Communications of this nature does not constitute violation of the governing Agreement and claim is declined.

/s/ R. E. Hagelberg
Chief Dispatcher"

No appeal was made from Chief Dispatcher's decision regarding claim for two hour call at the time and one-half rate. Claim appealed to Superintendent by General Chairman (Carrier's Exhibit A) is for eight hours at time and one-half rate. Subsequent pertinent correspondence exchanged by the parties is attached as Carrier's Exhibits B through L.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant L. S. Hickie is regularly assigned to the first shift telegrapher-clerk position at Fair Ground, Iowa, with assigned hours of 5:00 A. M. to 1:00 P. M. This position is not bulletined to work on holidays.

On the Thanksgiving Day holiday, November 28, 1963, at 8:10 A. M. the conductor of train No. 192, while at Fair Ground, communicated by telephone with the joint CGW-IC telegrapher at East Cabin. The purpose of the call was to determine whether train No. 192 could be promptly moved onto joint trackage so as to avoid blocking street crossings.

Claimant contended that since he ordinarily performs such work when he is on duty he should have been permitted to do so on the holiday, and filed claim accordingly.

The claim was pursued through the usual channels on a theory that use of the conductor to perform the communication work was violative of the telegraphers' scope rule. Carrier defended by contending that the scope rule does not exclusively reserve such work to telegraphers; also, that the precise question in dispute has been decided by Award 10536.

The scope rule in question has been interpreted by a number of our awards as requiring proof of past practices to establish telegraphers' right to perform particular work. That proof is lacking here.

Carrier's reliance on Award 10536, however, requires consideration of Addendum No. 3, a joint agreement concerning use of the telephone by train and engine service employees.

Award 10536 sustained a claim which is essentially identical to the present one except that the conductor first called the train dispatcher to establish contact with the telegrapher at East Cabin, where here the call was made direct to the telegrapher without any contact with the dispatcher.

The referee, citing his Award 10535, observed that it was the call from the conductor to the dispatcher that violated the rule, and that if the call had been made direct to the telegrapher he would have agreed with the Carrier that no violation had occurred.

This is of course a strictly literal application of the language of Addendum No. 3. But it has been adhered to in at least two later decisions involving these same parties, Awards 10872 and 12526. Two additional decisions involving another Carrier, but identical language, Awards 15618 and 15621, have affirmed the interpretation as set forth in Awards 10535 and 10536.

These awards cannot be considered palpably erroneous, therefore they are controlling and require a denial of the present claim.

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.

AWARD

Claim 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.