

Award No. 16868
Docket No. TE-15951

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago, Burlington and Quincy Railroad, that:

1. (a) Carrier violated the Agreement between the parties when on October 22, 1964, it required or permitted an employe not covered by said Agreement to transmit communications of record by radio-telephone at or near Creston, Iowa.

(b) Carrier shall compensate Wire Chief O. W. Schraufek, Creston, Iowa, for one call of two hours at the time and one-half rate.

2. (a) Carrier violated the Agreement between the parties when on October 15, 1964, it required or permitted an employe not covered by said Agreement to transmit a communication of record by telephone at Creston, Iowa.

(b) Carrier shall compensate Wire Chief O. W. Schraufek for a call of two hours at the time and one-half rate.

3. (a) Carrier violated the Agreement between the parties when on October 27, 1964, it required or permitted an employe not covered by said Agreement to transmit a communication of record by telephone at Creston, Iowa.

(b) Carrier shall compensate Wire Chief O. W. Schraufek, for a call of two hours at the time and one-half rate.

4. (a) Carrier violated the Agreement between the parties when on November 19, 1964, it required or permitted an employe not covered by said Agreement to transmit a communication of record by telephone at Creston, Iowa.

(b) Carrier shall compensate Wire Chief O. W. Schraufek for a call of two hours at the rate of time and one-half.

5. (a) Carrier violated the Agreement between the parties when on November 20, 1964, it required or permitted an employee not covered by said Agreement to transmit a communication of record by telephone at Creston, Iowa.

(b) Carrier shall compensate Wire Chief O. W. Schraufek for a call of two hours at the time and one-half rate.

6. (a) Carrier violated the Agreement between the parties when on November 25, 1964, it required or permitted an employee not covered by said Agreement to transmit a communication of record by telephone at Creston, Iowa.

(b) Carrier shall compensate Wire Chief O. W. Schraufek for a call of two hours at the time and one-half rate.

7. (a) Carrier violated the Agreement between the parties when on December 13, 1964, it required or permitted an employee not covered by said Agreement to transmit a communication of record by telephone at or near Creston, Iowa.

(b) Carrier shall compensate Relief Wire Chief R. W. Archer for a call of two hours at the time and one-half rate.

8. (a) Carrier violated the Agreement between the parties when on December 4, 1964, it required or permitted an employee not covered by said Agreement to transmit a communication of record by radio at Creston, Iowa.

(b) Carrier shall compensate Wire Chief O. W. Schraufek for a call of two hours at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective May 1, 1953, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Mr. O. W. Schraufek is regularly assigned to the Wire Chief position at Creston, Iowa, assigned hours 6:00 A.M. to 3:00 P.M., one hour for lunch, Monday through Friday.

Mr. R. W. Archer is the regularly assigned relief Wire Chief at Ottumwa and Creston, Iowa, working at Ottumwa on Mondays, Thursdays and Fridays, working at Creston on Saturdays and Sundays. His assigned hours at Creston are from 6:00 A.M. to 3:00 P.M. with one hour off for lunch.

Claims were handled in the usual manner up to and including the highest designated officer of the Carrier, and have been declined. Claims were handled separately on the property, but due to the similarity of the claims we have combined them in order to lessen the burden on the Board.

CARRIER'S STATEMENT OF FACTS: The dispute involved here was handled on the property as eight (8) separate claims. All claims involved alleged and unrecorded radio or telephone conversations about work, none of which were so-called communications of record. The Carrier has no record of any of the conversations involved, except that furnished by the Union in its claims. If these conversations actually occurred, then they apparently were recorded by some eavesdropper who spends his time on duty listening in on other people's conversations instead of performing the duties he is paid to perform.

Copies of the Carrier's declinations in the separate claims are attached hereto identified as Carrier's Exhibits Nos. 1 through 8, inclusive.

The Schedule of Rules Agreement between the parties, effective May 1, 1953, and amendments thereto, is by reference made a part of this submission.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner alleges that the several communications which make up the basis of the claims herein were transmitted by employees not covered by the Agreement between the parties herein and therefore in violation of Rule 1(b) of said Agreement which reads as follows:

"(b) Improvements or changes in the manner of handling train orders or communications of record shall not operate to take that work out from under this agreement."

Following are the several communications:

CLAIM NO. 1

On October 15, 1964, the yard clerk at Creston, Iowa, reported by telephone to the Dispatcher at Ottumwa, Iowa, the ordering time and crew for Train CGI, as follows:

"CGI ordered 7:05 P. M. Conductor W. A. Steele, Engineer W. K. Moore."

CLAIM NO. 2

On October 22, 1964, the following information was transmitted between the Engineer on Train No. 67 and the Dispatcher by radio-telephone:

(Dispatcher) "What crew are you and when were you ordered?"

(Engineer) "We were ordered for 5:15 A. M. and the Conductor is Carl."

(Dispatcher) "Who are you?"

(Engineer) "Engineer Harpin."

(Dispatcher) "OK."

CLAIM NO. 3

At 12:45 A.M. on October 27, 1964, the Footboard Yardmaster at Creston, Iowa, reported by telephone to the Dispatcher the following changes in train consists and changes in train loading on various trains at Creston:

(Yardmaster) "All three of these guys, two 70's and 66 will be way car changes."

(Dispatcher) "OK, I'll write it down that way."

(Yardmaster) "Also CDGI will be a way car change."

(Dispatcher) "OK."

At 1:30 A.M., the Yardmaster called the Dispatcher by telephone and reported:

(Yardmaster) "Here is some changes on loadings, 2nd LC 59 loads, 32 mtys 4050 tons. No. 66, 51 loads, 39 mtys and 1 stock, 3758 tons."

(Dispatcher) "OK."

CLAIM NO. 4

On November 19, 1964, at 4:24 P.M., the Yard Office at Creston, Iowa, reported to the Dispatcher the crew and ordering time of Train No. 73 at Creston, as follows:

(Yard Office) "73, Engineer G. H. Cox, Lamasters Fireman, W. A. Steele Conductor, Ordered 5:45 P.M."

(Dispatcher) "OK."

CLAIM NO. 5

On November 20, 1964, at 11:03 P.M., the Creston Yard Office reported the following tie ups to the Dispatcher:

(Yard Office) "Here are some tie ups, Aldrich 9:30 P.M., No. 17, Baumgardner 10:40 P.M."

(Dispatcher) "OK."

CLAIM NO. 6

On November 25, 1964, at 1:30 A.M., the Creston Yard Office reported the crews and ordering time as follows:

(Yard Office) "66 Stewart & Matheny and have Fireman, 10 will be Aldrich, 29 Stamford, 18 Lauer, 78 Peters & Baumgardner ordered on time 1:30 A.M. 981."

(Dispatcher) "OK."

CLAIM NO. 7

On December 4, 1964, at 10:21 P. M., Conductor Double on Extra 913 West reported his loading out of Creston by radio-telephone to the Dispatcher, as follows:

(Dispatcher) "Conductor Double at Creston, what is your loading out of there?"

(Conductor) "19 loads 71 emptys 2699 tons."

(Dispatcher) "OK."

CLAIM NO. 8

On December 13, 1964, at 3:27 P. M., Dispatcher by radio-telephone called Train GI-68 to determine its location, as follows:

(Dispatcher) "Dispatcher calling GI-68, what is your location?"

(GI-68) "Why we just left Creston at 3:22 P. M. Ed."

(Dispatcher) "OK."

An analysis of Rule 1(b) indicates that for it to be applicable the communications which are the basis of the claims must be either train orders or communications of record. The Petitioner alleges that the communications were all messages of record. The Carrier denies this. The Carrier admits that the telegraphers are the proper parties to transmit "messages of record." Issue is joined therefore on the question of whether the above communications are messages of record.

Several cases have been decided involving a determination of whether a certain communication is a message of record. An examination of those awards (Awards 16633, 16685, 16677, 16018 and 15779), leads us to a two criteria test to be applied in making the determination. Both answers must be in the affirmative to the following two questions before we can find that the communication is a message of record:

- 1.) Was the communication such that it directly affected the control of transportation?
- 2.) Was the nature of the message such that a permanent record of same was or should have been kept?

From a review of the messages and the record and after hearing arguments by the Petitioner and the Carrier we find that the messages here involved were informational in nature, and could not in and of themselves directly affect the control of transportation.

As Petitioner has failed to establish that the communications were messages of record, we cannot find a violation of Rule 1(b) which forbids the taking of messages of record out from under the Agreement.

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 Employes involved in this dispute are respectively Carrier and Employes 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 24th day of January 1969.