



Award No. 17096

Docket No. TE-16124

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
THE COLORADO AND SOUTHERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Colorado and Southern Railway, that:

1. Carrier violated an Agreement between the parties hereto when on December 21, 1964, it caused, required or permitted Conductor Risley, an employee not covered by the parties' Agreement, on Extra 701-A North, to copy Train Order No. 165 at Ballast Pit, in the absence of an emergency.
2. Carrier shall, because of the violation set out in paragraph 1 hereof, compensate Telegrapher B. B. Baker, Clayton, New Mexico, a day's pay (eight hours) at the straight time rate of the position occupied.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the Colorado and Southern Railway Company, hereinafter referred to as Carrier, and its employees represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Employees and/or Union, effective October 1, 1948, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The question presented by this claim is did Carrier's act of permitting or requiring Conductor Risley, a non-covered employee on Extra 701-A North, to copy a train order at Ballast Pit (Mile Post 286.93) on the date in question in the absence of an emergency, violate the terms of Appendix 9 (referred to in Rule 29)? The second question arising is, if the answer to the first question is in the affirmative, what is the extent of Carrier's liability for its violative act?

An analysis of the facts of record shows that Ballast Pit is located at Mile Post 286.93 on Carrier's main line between Denver, Colorado and Dallas, Texas. That the two (2) other station locations, e.g., Clayton, New Mexico and Trinchere, Colorado mentioned in the dispute are, in the order named, located at Mile Post 337.81 and 250.60, the mile posts being numbered commencing with Denver, Colorado.

Rule 38 (Rate of Pay) at page 37 of the parties' Agreement shows that on the effective date of said Agreement there existed at Trinchere two (2) positions under the Agreement. For ready reference the listing reads:

man, Denver, Colorado, for and in behalf of Telegrapher B. B. Baker, Clayton, New Mexico, for payment of eight hours, straight time, at minimum Telegrapher's rate paid on the C&S Railway Company, predicated on the allegation that the circumstances constituted violation of the Telegraphers' Agreement and that B. B. Baker was the senior idle Telegrapher on December 21, 1964. (Carrier's Exhibit "A").

Under date of January 25, 1965, Superintendent Ackerman made proper disallowance of such claim to the District Chairman and correctly informed him that "Attempts were made to call the Agent at Trinchere without success, to give him the order, making it necessary to give the Order to Conductor Risley." (Carrier's Exhibit "B").

Under date of March 10, 1965, General Chairman D. T. Echols of the Telegraphers' Organization made appeal to the highest designated officer of the Carrier the declination of the Superintendent. (Carrier's Exhibit "C").

Under date of April 30, 1965, in his file TE-1377, the highest designated officer of the Carrier made proper declination of the Organization General Chairman's letter of appeal (Carrier's Exhibit "D").

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves the copying of a train order by a conductor at "Ballast Pit" (M.P. 286.93), a point where no telegrapher is employed.

We believe that, without the necessity for extensive discussion, the issue shown by the record to be involved has been decided by at least three previous awards in disputes between these same parties, Awards 4577, 5828 and 11617. Accordingly, the claim must be sustained.

FINDINGS: The Third Division of the Adjustment Board, upon the whole 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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1969.

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