



Award Number 17194

Docket Number TE-15491

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Morris L. Myers, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Northern Pacific Railway, that:

1. Carrier violated the Agreement between the parties, commencing on or before May 16, 1964, and continuing thereafter, account train service employees on Train No. 748 and the Sixth Sub-division Local securing direct from the train dispatcher a check of trains and authority to enter Second Sub-Division, main line, St. Paul Division at Manitoba Junction.
2. Carrier shall compensate the senior qualified idle extra telegrapher, or if none available, then the nearest senior idle telegrapher observing rest days, eight hours at minimum telegraphers' rate in effect beginning May 16, 1964, and continuing daily, account Carrier transferring work from telegraphers' class to that of train service employees.
3. Carrier shall be required and instructed to permit a joint check of records to determine dates and amounts due employees set forth above.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective April 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Manitoba Junction is located at Mile Post 82.6, Main Line, Second Sub-Division between Staples and Dilworth, Minnesota. Manitoba Junction is also located at the beginning of Red River Branch Line, Sixth Sub-Division, St. Paul Division (West).

Rule 80, Wage Scale, Page 49 of the Agreement, listed the following positions existing at Manitoba Junction on the effective date of the Agreement:

251 (A). The movement of trains will be supervised by the train dispatcher. Oral and message instructions issued by him must be complied with. When necessary to provide single track operation on double track, or to move trains against the current of traffic, or for operation of work trains, train order authority must be obtained.

253. The train dispatcher must be advised in advance of any known condition that will delay the train or prevent it from making usual speed.

254. Except as affected by Rules 251 and 251 (A), all Block Signal Rules and Operating Rules remain in effect."

On May 16, 1964, claim was presented in behalf of the senior qualified idle extra telegrapher or nearest senior telegrapher regularly assigned off on rest day for payment of eight hours at the minimum telegraphers' straight time rate on May 16, 1964 and subsequent dates when train crews moving from the Sixth Subdivision onto the Second Subdivision secured authority from the train dispatcher to operate the electric switch lock at Manitoba Junction.

Attached as Carrier's Exhibit "A" are copies of the correspondence exchanged between the Carrier and the Employees in connection with this claim, commencing with District Chairman W. L. Hodges' letter of May 16, 1964 and terminating with General Chairman J. L. Askew's letter of August 14, 1964.

(Exhibits not reproduced)

OPINION OF BOARD: The facts in this case are not in dispute. Prior to September 27, 1963, there were three Telegrapher-Towerman positions at Manitoba Junction, Minnesota. The incumbents in those positions were responsible for the operation of a mechanical interlocking plant located in a tower structure. The towermen acted upon instructions issued by the train dispatcher with regard to the operation of the interlocking plant, and trains moved through the interlocking plant on signal indications. Manitoba Junction is located at the southern terminus (or beginning point, as the case may be) of the Carrier's Sixth Subdivision. It is also on the Carrier's Second Subdivision between Staples and Dilworth, Minnesota.

Effective September 27, 1963, the mechanical interlocking plant was abandoned and an electric switch lock connected with the signal system was installed. Also on September 27, 1963, the three positions of Telegrapher-Towerman at Manitoba Junction were abolished. The question of whether or not the abolishing of those positions was violative of the Agreement is not involved in the instant claim.

A local freight train operated each Monday, Wednesday and Friday from East Grand Fork, North Dakota, which is on the Sixth Subdivision, to Lake Park, Minnesota, which is on the Second Subdivision. Also, freight train No. 748 operated daily from East Grand Forks to Lake Park and return to East Grand Forks. Only the train runs from East Grand Forks to Lake Park are involved in this dispute.

Obviously, in order that trains get from East Grand Forks to Lake Park, they must leave the Sixth Subdivision at Manitoba Junction and enter the

Second Subdivision. When the Telegrapher-Towerman positions were abolished the Carrier issued instructions to be applicable at Manitoba Junction, as follows:

"SECOND SUBDIVISION AT MANITOBA JUNCTION:

ALL CONCERNED:

Trains from Sixth Subdivision must call train dispatcher before entering Second Subdivision.

Second and inferior class and extra trains may run as eastward extra trains with the current of traffic Manitoba Junction to Lake Park without train order authority.

Clearance not required.

SIXTH SUBDIVISION AT MANITOBA JUNCTION:

Clearance not required."

The Organization alleges in the instant claim that the Carrier violated the Agreement in not utilizing a Telegrapher in the communications involved when a train left the Sixth Subdivision and entered the Second Subdivision. More specifically, the Organization contends that every time that the train dispatcher was called before a train entered the Second Subdivision from the Sixth Subdivision, it was violative of Rule 1, Scope of the Agreement and of the Agreement dated August 1, 1941 between the Carrier on the one hand, and the Order of Railroad Telegraphers, Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, and the Brotherhood of Railroad Trainmen on the other hand, to by-pass a telegrapher in the communications with the train dispatcher. (Although the Organization cited other Rules of the Agreement as having been violated, the Board believes that only Rule 1 and the aforesaid August 1, 1941 Agreement are relevant to the issue in dispute insofar as the merits are concerned).

The aforesaid August 1, 1941 Agreement in pertinent parts reads as follows:

"AGREEMENT

between

NORTHERN PACIFIC RAILWAY COMPANY

and

ORDER OF RAILROAD TELEGRAPHERS

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN

ORDER OF RAILWAY CONDUCTORS

BROTHERHOOD OF RAILROAD TRAINMEN

(1) It is hereby agreed that train and engine service employes will not be required to call the dispatcher for the purpose of receiving orders governing

the movement of trains and that train and engine service employees will neither be required nor permitted to copy train orders governing the movement of trains, other than in emergencies as herein defined."

It is here noted that Paragraph (4) of the August 1, 1941 Agreement is not considered pertinent by the Board, if for no other reason, because a telegrapher was employed by the Carrier at Manitoba Junction on August 1, 1941.

It appears to the Board that its decision in this case must be based primarily upon the interpretation and application of Paragraph (1) the August 1, 1941 Agreement as related to the facts herein involved. That is to say, the Board wishes it to be clearly understood that the Award in this case cannot properly be used as a precedent in any other case where no agreement comparable to the August 1, 1941 Agreement exists and which is based solely or primarily upon the Scope Rule of the Agreement.

The Board believes that the specific question that must be answered in this case is whether the instruction by the Carrier that "trains from Sixth Subdivision must call train dispatcher before entering Second Subdivision" constituted an order "governing the movement of trains" within the meaning of Paragraph (1) of the August 1, 1941 Agreement. If the answer to that question is "yes", the Board must sustain the claim. If the answer is "no", the claim must be denied.

The Carrier contends that its instruction is not an order "governing the movement of trains" because the permission given by the dispatcher when a call is made to him in accordance with the instruction is to unlock the switch—a mere mechanical act. Further, says the Carrier, the duty of unlocking the switch is not and never has been the responsibility of a Telegrapher.

The Organization responds to this contention by asserting that it is not the operation of the switch that is being contested in this claim. Rather, it is the communication from the dispatcher that by-passes a telegrapher that is being challenged. The Organization further responds to the Carrier's contention by asserting that the permission given by the dispatcher is not in fact only that the switch may be opened.

In support of the Organization's position, it points to the statement made by the General Manager of the Carrier to the Organization during the processing of this claim on the property in the General Manager's July 13, 1964 letter to the Organization, that statement being "These train crews simply call a train dispatcher for the purpose of securing the necessary authority to operate switches at Manitoba Junction and enter the Second Subdivision Main Line." (Emphasis supplied.) The Organization also invites the Board's attention to the statement made by the Carrier's Chief of Labor Relations to the Organization, contained in the Carrier's August 11, 1964 letter, that statement being "As stated by Mr. Thomson, it is not necessary for the train crews to secure check of trains at Manitoba Junction, but merely to call for the necessary authority to open the switch and enter the Second Subdivision." (Emphasis supplied.)

We believe that the Organization's position that the authority that the dispatcher gives to the train crew does constitute an "order(s) governing the movement of trains." Quite obviously, the only purpose of opening the switch is to allow the train to move from the Sixth Subdivision tracks to the Second Subdivision tracks. Under the facts here involved, we do not believe that the clear intent of the August 1, 1941 Agreement can be avoided by the

artful but specious contention that a valid distinction can be made between authority to open a switch and authority to move the train. We further are of the belief that our Award in this case finds support in Award Nos. 13689 and 15469, in which Awards a Rule similar to the August 1, 1941 Agreement in the instant case was interpreted in the same way as we do so in this case.

In sustaining this claim, we are well aware that no formal train order is required by the Carrier in the movement of a train from the Sixth Subdivision. However, the fact that nothing is recorded or copied does not negate the fact that the dispatcher gives authority to move the train from one Subdivision to another. (See Award 15900 and Award No. 12305.)

Lastly, the Carrier asserts that the claim is barred by the sixty day provisions of Rule 40 of the April 1, 1956 Agreement between the Carrier and the Organization, and that the claim is barred by that Rule also because it is in behalf of unnamed claimants. Neither of these defenses has merit since the claim is a continuing one and since the persons on whose behalf the claim is made are readily identifiable. Many prior Awards of this Board have so held.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 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 6th day of June, 1969.

CARRIER MEMBERS' DISSENT TO AWARD 17194, DOCKET TE-15491

REFEREE MORRIS L. MYERS

The Majority completely misconceived and misconstrued the facts in this case. The trains involved did not need authority to enter the main line, they already possessed that authority. They only needed authority to open the switch and what was involved was not a violation of the August 1, 1941 Joint Agreement or any other rule in the Agreement.

For these and other reasons, we dissent.

/s/ HARRY S. TANSLEY
H. S. Tansley

/s/ R. A. DEROSSETT
R. A. DeRossett

/s/ C. H. MANOOGIAN
C. H. Manoogian

/s/ J. R. MATHIEU
J. R. Mathieu

/s/ C. L. MELBERG
C. L. Melberg