



Award No. 17244

Docket No. TE-16385

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John B. Criswell, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

CHICAGO, BURLINGTON AND 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. Carrier will compensate Mr. M. L. Wasko, relief operator, for two hours at punitive rate of \$4.2552 or total of \$8.51 account violation of Scope Rule 1 and Mediation Agreement of January 1, 1939, of the schedule, on April 25, 1965.

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. M. L. Wasko, hereinafter referred to as claimant, is the regularly assigned relief operator at Albia and Chariton, Iowa. Claimant worked from 7:00 A.M. to 3:00 P.M. on Sunday, April 25, 1965. Employees covered by the Agreement between the parties are employed at Chariton, Iowa from 7:00 A.M. to 3:00 P.M. and from 9:45 P.M. to 5:45 A.M. daily, and operate a centralized traffic control of switches and signals through yards at Chariton, Iowa.

At 4:09 P.M., April 25, Extra 118-D West, cut off his train east of Shannon. Extra 118-D West had cars to set out at Lucas and because of a wide load in his train could not meet another westbound train, GI-68, west of Shannon. Shannon is located just west of Chariton in centralized traffic control territory operated by the operator at Chariton during his assigned hours. Upon going back on his train, the engineer had to pass a red signal and the train dispatcher issued a Form F direct to the engineer by telephone at 4:09 P.M. There was no emergency involved.

Claim was filed and handled in the usual manner, including a conference, up to and including the highest designated officer of the Carrier and has been declined. Correspondence reflecting this handling on the property is attached hereto as TCU Exhibits 1 through 11.

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: Claimant is a regularly assigned relief operator, working at Chariton on Sunday and Monday, 7:00 A.M. to 3:00 P.M.; Tuesday and Wednesday 9:45 P.M. to 5:45 A.M.; and at Albia on Thursday 12 midnight to 8:00 A.M. There is no operator on duty at Chariton between the hours 3:00 P.M. and 9:45 P.M., and from 5:45 A.M.

(Exhibits not reproduced)

OPINION OF BOARD: The issue raised by Claimant is whether the communication work in the receipt of a Form F has been reserved to telegraphers.

Carrier argues that use of this form has been in effect on every division of its property since 1937 and by custom have been issued directly by the dispatcher to the engine or train crew, as well as by the operator.

There are documents in the submission to support the argument of long past practice.

There is sharp disagreement on whether a Form F constitutes a train order. It is an issue which the parties might have settled in negotiation of the 1953 Agreement or through other special agreements.

We agree with Claimant's argument that past practice is not necessarily a bar to his recovery. However, with the cloud of ambiguity we find over the rule in this case we must hold in behalf of the Carrier.

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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1969.