



Award Number 17334

Docket Number TE-16287

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David H. Brown, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**SOUTHERN PACIFIC COMPANY—TEXAS AND
LOUISIANA LINES**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Pacific Company (Texas and Louisiana Lines), that:

1. Carrier violated the Agreement between the parties when at 7:50 A.M., March 7, 1965, it required or permitted employee not covered by the Agreement to perform communication work at Bowl Tower, Englewood, Texas.
2. Carrier shall be required to renumerate Telegrapher-Towerman J. I. Wallington, who was observing a rest day on March 7, 1965, a day's pay at the time and one-half rate of his regular position.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties was effective December 1, 1946. Copy is available to your Board and by this reference is made a part of this submission.

Rule 1, Scope, of the Agreement reads as follows:

"This agreement shall govern the employment and compensation of the following:

"Managers and wire chiefs; telegraphers; telephone operators (Except switchboard operators); Agents; agent-telegraphers; printer and teletype mechanics, operators and supervisors now employed in "WS" office, New Orleans; "HN" office, Houston; "N" office, San Antonio; and printer and teletype operators that may be employed in the future in telegraph offices or who displace telegraphers; agent-telephoners; towermen; tower and train directors; block operators; staff men; and all other positions listed in the wage scale.

"The term 'telegraph offices' as used herein means any office where printer and teletype machines have been installed since April 1, 1938, to handle inter-city messages."

As amended, the Agreement includes a Wage Scale effective March 1, 1955. Claimant's regular position is listed therein at page 5, first-shift Towerman at Tower 26, Houston, Texas. His position is assigned to work 8:00 A.M. until 4:00 P.M., daily except Sundays and Mondays.

attention to Awards 22 and 23 of Special Board of Adjustment No. 553 concerning communications which were sustained account the train crew giving up their location. Further, the crew member ask for a line upon 1st 257 and the Ribbon Rail Train and was informed that 1st 257 is ready to leave and the Ribbon Rail Train was made up and would leave when the train crew got the rest of their stuff out. Also see Award 22 of the Special Board of Adjustment No. 506.

Such communications are related to the movement of trains and is work covered by the Scope Rule of the current agreement.

This is to advise you, your decision is unsatisfactory and the decision will be appealed.

Very truly yours,

Original Signed D. G. McCann
D. G. McCann
General Chairman

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: On Sunday, March 7, 1965, Mr. A. O. Biediger, Road Foreman of Engines, assigned to Carrier's territory which includes Englewood Yard, Houston, and Hearne, was riding on Train 258, a freight train en route from Hearne, the away-from-home terminal, and called the Bowl Tower, which is the yardmasters control tower from which the yardmaster supervises the Gravity Yard movements in Englewood Yard, Houston, Texas, on radio, stating Train 258 was located at MP 17 and inquiring as to the time First 257 and a train to handle ribbon rail from Englewood to Hearne was called to depart. An employee in the Tower answered over the radio to the effect that Train 1/257 was ready to depart, and in fact would leave when Train 258 got closer to Englewood. That party also indicated that the ribbon rail train was made up and that it would depart rather shortly. This exchange of information over the radio resulted in the claim at hand. The District Chairman, TCEU, presented claim to Superintendent L. A. Patterson such as is presented in Item 2 of Mr. Leighty's statement of claim. The Superintendent declined the claim and it was appealed to the Manager of Personnel, highest officer designated on the property to handle such matters, who also declined it. The case was discussed in conference, following which the decision was affirmed September 16, 1965. Notice of Organization's intention to submit this claim to your Board was received in copy of letter dated February 21, 1966. The correspondence in this case is attached as CARRIER'S EXHIBIT NO. 1.

(Exhibits not reproduced)

OPINION OF BOARD: This dispute arose out of a radio-telephone communication between some crew member of Train No. 258 and Yardmaster in Bowl Tower, Englewood, at 7:50 A.M., March 7, 1965. The exact communication, as stated during the handling of the claim on the property, was as follows:

Train 258: "We are at Mile Post 17 and should be at Eureka in about 30 minutes. What time is First 257 and what time if the ribbon rail train called.

Bowl Tower: "First 257 is ready to leave Englewood when you get a little closer we can turn him loose. The ribbon rail train is made up and will leave when we get the rest of this stuff out.

Train 258: "O. K. Thanks."

Claim requested payment of one day's pay, at time and one-half rate, on behalf of Telegrapher-Towerman J. I. Wallington, Tower 26 rate.

Superintendent declined the claim on the basis that the communication was not a communication of record as that term has been defined; that it was not an "OS" and did not take the place of train orders. The Organization's District Chairman rejected the Superintendent's decision, and without introduction of additional evidence, appealed to Carrier's highest officer designated to handle the claim. This officer disallowed the claim, pointing out that Organization had not referred to any rule in support thereof.

On September 8, 1965, the General Chairman and Manager of Personnel had a conference which was confirmed by Manager of Personnel in letter of September 16, 1965. He stated: "At that conference I asked you how the exchange of information between the employee at Englewood and the crew member of Train 258 affected the movement of any train, and you stated that you could not say."

On December 3, 1965, General Chairman replied to this statement as follows: "The employees point out that the train crew in charge of Train 258 gave his location as Mile Post 17, and stated they would be at Eureka in about thirty (30) minutes. * * * Further, the crew member ask for a line up on first 257 and the Ribbon Rail Train and was informed that first 257 is ready to leave and the Ribbon Rail Train was made up and would leave when the train crew got the rest of their stuff out."

It is clear that the parties are not in disagreement as to what occurred. The sole question for decision, based upon the issues raised during the handling of the claim on the property, is whether or not the communication was in effect a train order which "affected the movement of any train." The Organization relies solely on the communication itself as representing proof of a prima facie case. We believe the Organization is in error in such reliance. It would be speculation on our part to supply the necessary inferences to support the Organization's position. Inferences may properly be drawn from uncontroverted evidence, but the basic case may not be supported by inferences alone.

Without proof, we have no way of knowing whether the communication did or did not affect the movement of Train 258. There are no allegations that movements of other trains were affected. When the Organization, during the handling on the property, was confronted with a denial that the communication affected the movement of any train, it had the burden of going forward with evidence to support the case. Absent such evidence the claim must fail for lack of proof.

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 24th day of July 1969.