



Award Number 17714

Docket Number TE-16519

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
CENTRAL OF GEORGIA RAILWAY COMPANY**

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

1. Carrier violated the Telegraphers' Agreement when on the 3rd day of April, 1965, it caused, required or permitted Mr. J. W. Gunter, Conductor on Train No. 81, a train service employee, not covered by the Telegraphers' Agreement, to handle (receive, copy, repeat and deliver) Train Order No. 15 at Salem, Ala., via telephone.
2. Carrier, in consequence of its violative action, shall be required to compensate Extra Telegrapher Mr. J. C. Campbell, Opelika, Ala., for one (1) call, two (2) hours at one and one-half times the pro rata hourly rate of \$2.5228.

EMPLOYEES' STATEMENT OF FACTS: The agreement between the parties, effective October 31, 1959, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was presented and progressed in accordance with the time limits provided by the Agreement up to and including appeal and conference with the highest officer designated by the Carrier to receive appeals. Having failed to reach a settlement, the Employees now appeal to your Honorable Board for adjudication.

Salem and Opelika, Alabama, are located on Carrier's line between Birmingham, Alabama and Columbus, Georgia. Salem is located 132.9 miles southeast of Birmingham and Opelika is 122.7 miles from Birmingham. Telegraphers are employed at Opelika but Salem is a location where no telegraphers are employed. There is a wayside telephone at Salem, provided so that conductors or other members of train crews may contact the train dispatcher, located at Columbus, Georgia, 18.5 miles southeast of Salem.

On April 3, 1965, conductor J. W. Gunter in charge of Carrier's Train No. 81 called the train dispatcher on this wayside telephone and, as a result of this call, the train dispatcher transmitted Train Order No. 15 to the telegrapher on duty in "YD" office in Columbus, Georgia, and required that telegrapher to relay the train order to conductor Gunter on the same telephone line while the train dispatcher listened in. The procedure was, the train dispatcher transmitted the train order to the telegrapher in Columbus Yard, who, in turn, transmitted the train order to the telegrapher in Columbus Yard, who, in turn, transmitted it to conductor Gunter, who, after copying,

The claim was declined at each and every stage of handling on the property, as is evidenced by the principal exchanges of correspondence hereto attached marked CARRIER'S EXHIBITS #1 through #10. The claim is without any semblance of merit.

The rules and working conditions agreement between the parties is effective October 31, 1959, as amended. Copies are on file with your Board, and the agreement, as amended, is hereby made a part of this dispute as though reproduced herein word for word.

(Exhibits Not Reproduced)

OPINION OF BOARD: On April 3, 1965, Conductor J. W. Gunter, in charge of Train No. 81, called the train dispatcher on a wayside telephone located at Salem, Alabama. There is no agent-operator employed at Salem, Alabama. As a result of Conductor Gunter's call, the train dispatcher transmitted Train Order No. 15 to the Telegrapher on duty in "YD" office in Columbus, Georgia, and required the telegrapher to relay the Train Order to Conductor Gunter on the same telephone line. After copying the Train Order, Conductor Gunter repeated the train order to the telegrapher, who, in turn, repeated the train order to the train dispatcher. The train dispatcher gave the telegrapher "complete" and the telegrapher then gave "complete" to Conductor Gunter.

The Organization and Carrier are in accord on the facts; the dispute concerns itself with the right of Claimant to compensation. The Organization relies on the following provisions of the Agreement:

"RULE 18—MISCELLANEOUS

* * *

(e-1) No employe other than those covered by this Agreement, and train dispatchers, shall be required or permitted to perform telegraphing or telephoning in connection with the movement of trains except in cases of bona fide emergency.

(e-2) At telegraph offices conductors or trainmen, at other than regular assigned hours for operators, receive train orders covering movement of trains, the operator will be allowed one call.

* * *"

"MEMO AGREEMENT NO. 3

REVISED MEMORANDUM OF AGREEMENT BETWEEN ORDER OF RAILROAD TELEGRAPHERS, ORDER OF RAILWAY CONDUCTORS, BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN, BROTHERHOOD OF RAILROAD TRAINMEN AND CENTRAL OF GEORGIA RAILWAY COMPANY, COVERING THE SUBJECT OF TRAIN SERVICE EMPLOYEES' USE OF THE TELEPHONE

It is agreed that Train and/or Engine Service employes will not be required or permitted to call Dispatchers on the telephone in connection with train movement or take train orders over the telephone except under emergency conditions which are defined as follows:

- (1) Storms, fogs, washouts, high water;

- (2) Wrecks, slides, snow blockades;
- (3) Accidents, obstructions to tracks;
- (4) Unusual delays caused by engine and equipment failures, break-in-two's, hot boxes, and failure of fixed signals;
- (5) When train has been delayed by non-arrival of another train at meeting or passing point for thirty (30) minutes or more; and
- (6) Other unforeseen situations where life or property may be in jeopardy, requiring immediate attention, which could not have been anticipated when train was at previous telegraph office and which would result in serious delay to trains.

This agreement shall become effective May 1, 1949, and shall remain in effect subject to the provisions of the Railway Labor Act."

"MEMO AGREEMENT NO. 4

It is agreed and understood that when penalty claims are allowed account train orders being copied at locations where no telegraphers are employed, the basic rate of pay on the entire railroad will be \$2.20 per hour, plus cost-of-living adjustment, or any future wage adjustment.

Signed at Savannah, Georgia, this 29th day of July, 1959."

It has been acknowledged by the Organization that denial Awards Nos. 15618 and 15621 (McGovern) involved the same issue, same rules, same parties, and similar contentions. It is also noted that the Organization does not take issue with Carrier's contention that under the doctrine of stare decisis, this Board must find the more recent awards now controlling the instant issue to be patently erroneous in order to arrive at a diverse conclusion. The doctrine of stare decisis is not only a basic and fundamental concept; but also a highly necessary and imperative doctrine required by both Labor and Management for the orderly administration and conduct of their respective functions. However, this Board must never cease to serve its designated purpose of determining disputes under applicable Rules brought into being by negotiation and signatory agreement. Although this Board should always be extremely cautious in overturning a prior Award, it should never be lulled by prior erroneous awards into perpetuating a concept that was never intended to be.

A study of the history of this issue reveals that Referee Vokoun on S.B.A. 269 first interpreted the identical rules as those cited herein (except Memorandum No. 4). Referee Vokoun's Awards Nos. 1, 2, 5, 35, 36, 37, and 38 of S.B.A. 269 sustained claims similar to the instant claim; the only difference in the Vokoun Awards being that the conductor copied train orders directly from the train dispatcher.

Subsequent to the Vokoun Awards (1959), Memorandum No. 4 was entered into providing for the measure of damages. Later in the same year (October 31, 1959), a new Agreement between the parties became effective and Memorandum No. 4 was added. S.B.A. 269 was concerned with disputes on the property involved herein. The Special Board No. 269 interpretation was followed by this Carrier until 1962, in that from the time of the Vokoun Awards until awards arising from the Chicago Great Western property hereafter mentioned, claims similar to the instant claim were paid.

In April of 1962, Referee Ables in Award 10535 arising on the Chicago Great Western property, denied a claim similar to the instant claim. Denial Awards 10872 (Hall) and 12526 (Englestein) on this same property followed Award 10535.

In June of 1967, this Board adopted Awards Nos. 15618 and 15621 (McGovern) which denied claims identical to the instant claim on this same property. The McGovern Awards cited and followed the Chicago Great Western Awards above set out.

Under the rules cited in the instant dispute and relied upon by the Organization, this Board finds:

1. Employees not covered by the Agreement, except a train dispatcher, are prohibited from handling train order messages by telegraph or telephone, unless an emergency requires otherwise.
2. Unless emergency conditions exist, Train and/or Engine Service employes are prohibited from using the telephone to call dispatchers in connection with train orders or train movements.
3. A penalty is provided for in event train orders are copied at locations where telegraphers are not employed.

Under the undisputed facts Conductor Gunter, not covered by the Agreement herein, made a phone call to the dispatcher and copied a train order transmitted by a telegrapher at the direction of the dispatcher while the dispatcher listened in on the line. It is true that a telegrapher was called to transmit the train order. However, in the absence of emergency conditions, "Memo. Agreement No. 3" was undoubtedly and undeniably violated; Conductor Gunter did receive a train order over the telephone.

It is a fundamental rule of this Board that when specific exceptions to a rule are recited—none others will be implied. The only exceptions recited in "Memo. Agreement No. 3" are emergency exceptions. The fact that the train order was ultimately transmitted by a telegrapher does not constitute an exception rule, and this exception will not be implied.

It appears to this Board that the Carrier in this instance is attempting to accomplish something indirectly that it is prohibited from doing directly under the terms of a good faith agreement.

That part of the Agreement pertaining to the issue involved in this dispute is cited in this Award. These provisions are not ambiguous; they are clear and concise. Except under emergency conditions, which are enumerated, Train and/or Engine Service employes will not be required or permitted to call dispatchers on the telephone in connection with train movements or take train orders over the telephone.

This Board finds that Awards 15618 and 15621 erroneously failed to demonstrate the true intent of the Agreement under the clear concise provisions thereof.

Having failed to find that an enumerated emergency existed in this instance, this claim will be sustained.

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 13th day of February 1970.