Award Number 17752
Docket Number TE-17040

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Ellis, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago Great Western Railway, that:

1. Carrier violated the Agreement between the parties when on March 23, 1965 it required or permitted the Roadmaster and Section Foreman at New Hampton, Iowa to inspect a train passing that sation and report time passed (OS'd) to the Train Dispatcher.

2. Carrier shall, because of this violation, compensate B. K. Burkhalter, Agent-Telegrapher at New Hampton on March 23, 1965, in the amount of a call of two (2) hours' pay at the time and one-half rate.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective June 1, 1948 (reprinted May 1, 1958), as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Claimant, Mrs. B. K. Burkhalter, on claim date, was regularly assigned to the position of agent-telegrapher at New Hampton, Iowa. New Hampton is a one-man station with an assignment of 8:00 A.M. to 5:00 P.M. (one hour off for meal period), Monday through Friday with rest days of Saturday and Sunday. The station at New Hampton is normally closed on rest days.

This dispute arose out of Carrier's action of calling the roadmaster (an officer of the Carrier headquartered at New Hampton) and the section foreman at New Hampton to inspect Train No. 41 for possible defects when said Train No. 41 passed New Hampton at a time Claimant was available for service but not on duty on March 23, 1965.

On claim date, after being instructed by the train dispatcher to do so, the roadmaster and section foreman (one on each side of the track) inspected Train No. 41 passing New Hampton. When said train had passed New Hampton and no defects were found by the roadmaster and section foreman, the roadmaster, by use of the train dispatchers' telephone, reported that No. 41 passed New Hampton at 4:30 (A.M.) with no defects. This information enabled the train dispatcher to set up a call for the time the connecting crew should go on duty, and of course conveyed the important information that Train No. 41 was proceeding without delay.

Train 41 involved in this dispute was a southbound through freight, St. Paul, Minnesota to Oelwein, Iowa, a distance of 178.5 miles. All of Carrier's locomotives and cabooses are radio equipped and land radio stations are located at stations designated (R) on rough sketch. New Hampton and other land radio stations designated by an asterisk (*) on rough sketch can be remotely controlled from Dispatching Office at Oelwein, Iowa at times when no operator is on duty at said stations. This arrangement permits the Train Dispatcher at Oelwein to have direct two-way communication with all train and engine crews at any and all times while en route from a point about midway between Randolph and Hayfield and Oelwein, regardless of whether or not an operator is on duty at intermediate stations. Thus the train dispatcher has constant knowledge of progress and location of all trains and of any and all delay or difficulty encountered in this territory of some 125 miles. There is no rule or requirement that an "OS" record be maintained at intermediate stations such as New Hampton and it is a practice to maintain "OS" records at such stations only at times when an operator is on duty. Definitely no "OS" record of Train 41 passing New Hampton on claim date (March 23, 1965) was made or maintained at either New Hampton or in Train Dispatching Office at Oelwein, Iowa, and no useful purpose would be served thereby. Conductor's Delay Report shows that Train 41 departed Elkton, Minnesota (80.3 miles north of Oelwein) at 3:35 A.M., March 23, 1965, with 87 loads, 23 empties, 6750 tons, made no stops between Elkton and final terminal at Oelwein, experienced no difficulty or delay of any kind and arrived Oelwein at 6:15 A.M. Operator was on duty at McIntire, Iowa, 30.3 miles north of New Hampton, and OS'd Train 41 by that station at 4:20 A.M.

An educated estimate by the Chief Dispatcher, taking into consideration the cars and tonnage handled, terrain, grades, curves, existing weather conditions, operating personnel, many years of experience and observation, is that Train 41 on this trip departing McIntire at 4:20 A.M. could not possibly have passed New Hampton before 5:00 A.M.

OPINION OF BOARD: Petitioner assserts violation of its Agreement, occurring at New Hampton, Iowa, March 23, 1965. It is contended that the Scope Rule was violated when a Roadmaster and a Section Foreman inspected train #41 as it passed the station about 4:30 A.M. Further, it is contended that a report was given by the Roadmaster to the Train Dispatcher as to the time the train passed New Hampton. The Carrier admits that the Roadmaster and Section Foreman inspected the passing train, but denies that such action was a violation of Petitioner's agreement. It denied, however, that there was a report of the train movement from the Roadmaster to the Train Dispatcher.

At the outset the question arises as to whether Petitioner has presented any probative evidence to sustain its claim that the Roadmaster gave a report of the train movement to the train dispatcher. In the original claim filed by the General Chairman on May 17, 1965, the General Chairman stated:

> "Aside from the actual train inspection, this transaction involves the important communication handling of the message to the Train Dispatcher that Train No. 41 was free of defects passing New Hampton, the time No. 41 passed New Hampton (OS)."

In the response of the office with whom the claim was filed, dated July 14, 1965, it was stated:

> "Insofar as the so-called 'OS' you allege was furnished to the dispatcher is concerned, there is no record of time on train sheet that would indicate this occurred."

Throughout the handling on the property, Petitioner continued the assertion that the Roadmaster had given a report of the train movement, but did not produce any probative evidence to support such assertion. At every level of handling, the Carrier continued to deny that such report was given. Petitioner, when faced with the denial of the occurrence, then had the burden of coming forward with probative evidence to prove the giving of the report by the Roadmaster. Since it failed to do this, we have no alternative but to hold there is a failure of proof on this phase of the dispute.

With regard to the claim, account inspection of the train by the Roadmaster and the Section Foreman, there is no proof that such action was violative of Petitioner's agreement. Indeed, Petitioner seems to agree that inspections of passing trains are included in the duties of practically all employees. On the last page of Petitioner's ex parte submission, it is stated:

> "Employees concede that employees of virtually every craft are expected to inspect trains passing when on duty. However, where, as here, employees are called outside of assigned hours to inspect trains and make a report to the train dispatcher the results thereof and/or when the trains involved passed (OS work), such work belongs to employees covered by the Telegraphers' Agreement."

Employes have produced no evidence to support their contention that under the particular circumstances involved, the exclusive right to inspect the train involved, at this particular time, was vested in employees covered by Petitioner's agreement.

In view of the foregoing, the claim will be denied.

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 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of March 1970.

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