



**Award Number 17821**

**Docket Number TE-17869**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Arthur W. Devine, Referee**

**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**

**THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Employees Union on the Pittsburgh and Lake Erie Railroad, that:

1. On February 19, 1967 at or about 9:00 P.M. the Carrier violated the TCU Agreement when it required or permitted the chief dispatcher on duty, Mr. Ray Collie, to transmit via radio instructions to Mr. H. R. Kerr, Road Foreman of Engines, who was on Train No. 191, Engines 2819-2816 located in the Aliquippa, Pa. yard district.

Carrier shall be required to compensate the operator on duty at "QA" West Aliquippa, Pa., Mr. D. L. Eberle, a day's pay at the "QA" rate of \$3.4786 per hour for a total claim of \$27.83 for the above violation.

**EMPLOYEES' STATEMENT OF FACTS:**

**(a) STATEMENT OF THE CASE**

This dispute arose on February 19, 1967 about 9:00 P.M. when the Chief Dispatcher, Ray Collie, contacted H. R. Kerr, Road Foreman of Engines on Train 191 in the Aliquippa, Pennsylvania Yard District and transmitted to Road Foreman Kerr information concerning the movements of trains 9 and 10. Chief Dispatcher Collie informed Road Foreman Kerr that Train No. 191 would have to wait for Nos. 9 and 10 at DF.

**(b) ISSUES**

Did the Carrier violate the Agreement when it permitted Chief Train Dispatcher Collie to transmit by radio instructions affecting the movement of trains to Road Foreman H. R. Kerr located on Train No. 191 in the Aliquippa, Pennsylvania Yard District.

Damages for breach of Agreement.

**(c) FACTS**

On February 19, 1967, Train No. 191, which was located in the Aliquippa, Pennsylvania Yard District, was equipped with a radio and Road Foreman of Engines on Train No. 191 received from Chief Dispatcher Ray Collie, on duty in the dispatcher's office in Pittsburgh, Pennsylvania, information concerning the movement of Trains Nos. 9, 10 and 191. After Road Foreman Kerr had informed Chief Dispatcher Collie that 191 wasn't making much speed, Chief Dispatcher Collie informed him that he would have to

The basis of the claim for Operator Eberle is the Organization's version of a conversation which transpired between Chief Dispatcher Collie and Road Foreman Kerr as Train No. 191 was enroute in the Aliquippa territory. This version is included in the following excerpt from the T-CEU General Chairman's letter of appeal dated July 25, 1967 to Carrier's Director of Personnel:

"The facts show that Dispatcher Collie advised No. 191 that they 'were figuring on running him ahead of No. 9 and No. 10 at Beaver'.

"Road Foreman Kerr on Train No. 191 answered over the radio that 'we aren't making much speed' and Chief Dispatcher Collie answered 'you will have to wait for No. 9 and 10 at DF'.

"There can be no doubt that the above transmissions most certainly did concern the movement of that train since it made the decision for Chief Dispatcher Collie on whether or not to run No. 191 ahead of passenger trains No. 9 and 10 at DF."

Claim for an additional day's pay in behalf of Operator Eberle was handled by the T-CEU representatives with Carrier officers at each level of appeal. The claim was consistently denied by the Carrier on the basis that a conversation between the Road Foreman and the Chief Dispatcher did not constitute a communication of record nor did it constitute instructions to the crew, hence any such conversation could not be a violation of the Agreement.

(Exhibits Not Reproduced)

**OPINION OF BOARD:** Employees allege that a radio-telephone conversation on February 19, 1967, between the Chief Dispatcher at Pittsburgh and a Road Foreman of Engines aboard train No. 191 violated the telegraphers' agreement. They base their position on a contention that the conversation contained instructions affecting the movement of trains.

The conversation in question, as presented by the Employees, consisted of the Chief Dispatcher's saying to the Road Foreman that "they were figuring on running him ahead of Numbers 9 and 10 at Beaver"; the Road Foreman's reply: "We aren't making much speed", and the Chief Dispatcher's rejoinder: "You will have to wait for No. 9 and 10 at 'DF'".

This cryptic description of what occurred may be sufficient for the parties, acquainted with the trains, territory and locations, to understand what was involved. But it is wholly inadequate as a basis for rendering a decision which interprets and applies a labor agreement. Nowhere in the record—on the property or in the submission—do the Employees show, or even attempt to show, in what way the conversation affected train movements.

Without such a showing the Board must deny the claim in accordance with the firmly established principle that the burden of establishing facts sufficient to support an alleged agreement violation rests with the petitioner who makes such an assertion. The Employees clearly have not met that burden here.

**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;