



**Award Number 17839**

**Docket Number TE-16313**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**James R. Jones, Referee**

**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**

**MISSOURI PACIFIC RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Employees Union on the Missouri Pacific Railroad, that:

"On Monday, February 22, 1965, dispatcher M. F. Martin, by wireless telephone (Radio) called No. 50 going out of Houston and gave this message;

"Houston, Feb. 22, 1965

C&E No. 50—Houston

Do not go beyond Dyersdale until derailment cleared 1 mile west of Huffman, will contact you by radio.

**MF M . . . 828 AM."**

Then, again contacted by wireless telephone (Radio):

"C&E No. 50

Reduce speed to 30 MPH MP 396 pole 9 to 396 pole 10 and watch for close clearance. . . MF M."

1. Carrier violated the Telegraphers' Agreement of March 1, 1952 when it permitted a member of the crew on No. 50 on the said day to copy a message by radio which is strict violation of this order. Due to the fact that Opr could have copied this message, opening a message center on No. 50.
2. The Carrier also violated The Telegraphers' Agreement on Feb. 22, 1965 under Scope Rule 1 and Rule 2 (c) when it permitted a member of the train crew, whoever he might be or title held, did violate this said rule and is in strict violation of The Telegraphers' Agreement.
3. The Carrier shall compensate the senior idle telegrapher, extra in pref, 8 hours at pro rata and do so claim in favor of Mr. R. J. Touchette.
4. The Carrier shall compensate the senior idle telegrapher, extra in pref, for the Rule 1 and Rule 2 (c) violation at pro rata rate for transmission of the said train order in favor of N. L. Carriere, Jr.

hours' pay each at the straight time rate alleging a violation of the Telegraphers' Agreement on February 22, 1965.

The claim as submitted is vague and indefinite. The first part of the claim is enclosed in quotation marks giving the impression that some written form is being quoted, even though the statement indicates it was a conversation between a train dispatcher and a member of the train crew of No. 50 at Houston. Obviously there was no written message involved, but rather a radio conversation between the dispatcher at Houston and a train crew member at Houston. Also, in Item No. 1 it is stated the Agreement was violated when a member of the crew on No. 50 was permitted to COPY a message by radio. There is nothing in the record indicating that any part of the radio conversation was copied by a member of the crew of No. 50. In addition, Item No. 2 is an incomplete sentence and even so eight hours is claimed predicated on the language contained in Item No. 2 which does not identify the act that allegedly resulted in the violation.

There is no rule of the Telegraphers' Agreement prohibiting train dispatchers and others from conversing with one another over the telephone, radio or any other means utilized for voice communication. There is no rule of the Telegraphers' Agreement which reserves to telegraphers the exclusive right to transmit information between the train dispatcher and any other employe of the Carrier. The only work comprehended by the Telegraphers' Agreement is that which is necessary in copying train orders issued by train dispatchers to telegraphers located in telegraph offices. The radio conversation between the dispatcher at Houston, and a crew member of No. 50 while No. 50 was at Houston certainly does not fall within this category.

In view of the foregoing, claims are without merit or rule support and are hereby declined.

Yours truly,  
/s/ B. W. SMITH"

The case is now before your Board for adjudication.

**OPINION OF BOARD:** Claimants rest their case on Rules 1 and 2 of the Agreement. This Board cannot find that Rule 1 is applicable here. Rule 2 does apply.

However, the burden of proving a violation of Rule 2 is upon the Claimant. Mere assertions unsupported by sufficient probative evidence cannot be sustained by this Board. The Board cannot be expected to resolve facts unless the parties to the dispute agree what is fact or unless there is evidence presented on which a judgment of fact can be made.

In this case, Claimant alleges dispatcher Martin violated Rule 2 by transmitting two messages to the crew on train No. 50. Claimant says Rule 2 was further violated by Carrier permitting the train crew on No. 50 to copy a message by radio. In the handling on the property, Carrier denied that any train order was sent, or that any message was copied.

Since there is no agreement as to these basic facts, it is incumbent upon the Claimant to submit further evidence to support its claim. Claimant concludes that the Carrier's Superintendent did not disagree with the facts pre-

still within the limits of the terminal (HB&T track), the dispatcher was informed that the main track at the scene of the derailment was still obstructed. The dispatcher then called the engine crew on No. 50 and informed them that he would be holding them at Dyersdale. The dispatcher's reason for contacting No. 50 was not to control their train movement at Dyersdale, as he controlled that by block signals, but merely as information to the crew and to keep them from having to report stop indication signal to dispatcher at Dyersdale. The Carrier's operating rules require that when a train or engine has a stop indication and such indication does not change promptly to a more favorable indication, then a member of the crew must communicate with train dispatcher, or control operator, if means of communication is available, and report that the signal displays a stop indication.

7. Dyersdale is a point where no telegrapher is employed. The dispatcher by the control lights on his CTC board can tell when a train or engine arrives or departs at Dyersdale. On the date of the claims, No. 50 arrived at Dyersdale at 10:37 A.M. and departed from Dyersdale at 2:51 P.M. Just prior to No. 50's departure from Dyersdale at 2:51 P.M., the dispatcher was informed that there was close clearance at the derailment point and that the clearance was unsafe for normal speed. It was then the dispatcher called the crew on the radio and informed them to reduce speed to 30 M.P.H. and watch for close clearance at M.P. 396, Pole 9 to Pole 10.

8. It was from the two conversations in the foregoing that the organization contends that their agreement was violated. The Employees in writing up the claims have reduced the conversation to train order form, although these conversations did not occur in that manner. The conversations between the dispatcher and engine crew did not result in a train order being issued, neither was there a message copied by the crew on No. 50. The dispatcher merely informed the engine crew by radio of conditions that developed after No. 50 departed from Union Station.

9. The District Chairman, L. J. Bienvenu, initiated a claim under date of March 14, 1965, on behalf of Telegraphers R. J. Touchette and N. L. Carriere, Jr., for eight hours' pay each at the straight time rate contending that the Carrier violated the provisions of Rule 1 and Rule 2 (c) of the Telegraphers' Agreement when it permitted a member of the train crew, "whoever he might be or title held to violate this rule." Also, the Organization contended Carrier permitted a member of the crew on No. 50 on the said day to copy a message by radio.

10. The claims were progressed on the property and finally appealed to the Director of Labor Relations by the General Chairman in a letter dated April 17, 1965. The Carrier's position is set forth in the letter of the Director of Labor Relations, which is quoted below for the convenience of your Board:

"June 4, 1965  
K 279-620

Mr. R. T. Phillips  
General Chairman—TCU  
P. O. Box 456  
Palestine, Texas 75801

Dear Sir:

Reference to your letter dated April 17, 1965, file F-6-590, appealing from the decision of General Manager D. J. Smith claims on behalf of Telegraphers R. J. Touchette and N. L. Carriere, Jr. for eight

sented by the District Chairman and actually the Superintendent accepted the alleged facts as correct when the Superintendent denied the claim. This Board cannot reach the same conclusion.

We feel that there were many ways to present competent evidence or testimony to support the contentions. Claimants failed to present such evidence and therefore the claim cannot be sustained.

**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 Employee involved in this dispute are respectively Carrier and Employee 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

Claimants failed to meet its burden of proving its claim.

#### **A W A R D**

Claim dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Third Division

**ATTEST: S. H. Schulty**  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of April 1970.