

Award Number 17849

Docket Number TE-17392

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

David L. Kabaker, Referee

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**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-Kansas-Texas Railroad Company, that:

**Claim No. 1**

1. Carrier violated the Agreement between the parties when, on January 7, 1967, an employee outside the scope of the Agreement between the parties transmitted a message and/or communication of record from Eufaula, Okla., on a rest day of the agent, (Mrs.) B. R. Echelle, while the station was closed, to the train dispatcher on duty.
2. Carrier shall compensate (Mrs.) B. R. Echelle for eight (8) hours at the minimum rate for telegraphers as set forth in the current Agreement (\$23.16).

**Claim No. 2**

1. Carrier violated the Agreement between the parties when, on September 29, 1966, an employee outside the scope of the Agreement between the parties transmitted a message and/or communication of record from Clinton, Missouri, to the train dispatcher while the agent-telegrapher, C. J. Harris, was off duty and the station was closed.
2. Carrier shall compensate C. J. Harris for eight (8) hours at the minimum rate for telegraphers as set forth in the current Agreement (\$21.26).

**Claim No. 3**

1. Carrier violated the Agreement between the parties when, on September 28, 1966, an employee outside the scope of the Agreement between the parties copied a "train sight" (line-up) at Durant, Okla., from the dispatcher on duty, while the agent, W. H. Nicksch, was off duty, and the station was closed.
2. Carrier shall compensate W. H. Nicksch, Agent-Telegrapher, Durant, Okla., for a call (two hours at time and one-half rate), as set forth in the current Agreement, in addition to compensation already received.

for eight (8) hours or one day's pay at the minimum rate per day for telegraphers as set forth in the Agreement on the basis that the use of the telephone by Trainmaster McCrery in advising the train dispatcher that he would stay at the Colonial Motel at Clinton for the night involved the handling of a communication of record in violation of Rules 1(a) and 1(d) of the Telegraphers' Agreement.

(3) About 4:28 P.M., Wednesday, September 28, 1966, KO&G Trainmaster V. M. Driskell, who was making motor car trip with T&P General Manager J. C. Love, Muskogee, Oklahoma, to Whitesboro, Texas, upon arrival Durant, Oklahoma, obtained train sight from train dispatcher for use on joint track Durant to Ray Yard, Denison, Texas. Two shifts of telegraphers are regularly assigned at Durant consisting of Agent-telegrapher, 7:00 A.M. to 3:00 P.M., Monday through Saturday, rest day Sunday, and Telegrapher-clerk, 10:00 P.M. to 6:00 A.M. daily except Sunday. Claim was made by General Chairman A. W. Riley for and on behalf of W. H. Niksch, Agent-telegrapher, Durant, for a minimum call of two hours at time and one-half on the basis that the use of the telephone by the KO&G Trainmaster in this instance is in violation of Rules 1(a) and 1(c) of the Telegraphers' Agreement.

Each of these claims have been handled in the usual manner up to and including the chief operating officer of the Carrier designated to handle such disputes and declined without reaching an adjustment or settlement in this manner as indicated in copy of correspondence identified as Carrier's Exhibits 1, 2 and 3, corresponding with Claims 1, 2 and 3 respectively, attached hereto and made a part hereof.

(Exhibits Not Reproduced)

**OPINION OF BOARD:** In this docket there are three separate claims as follows:

**Claim No. 1:** On January 7, 1967 the Assistant Roadmaster at Eufaula, Oklahoma called the Train Dispatcher by telephone and recited the following:

"This is Couch at Eufaula and I have a broken rail at Mile Post 532 so better contact W. P. Horner at Muskogee and put out a slow order: Reduce speed to 5 MPH 18 poles to 19 poles south of MP 532 account broken rail".

The Train Dispatcher thereafter issued a train order to all trains operating to "reduce speed to 5 MPH 18 poles to 19 poles south of MP 532 account broken rail."

Saturday, January 7, 1967 was the rest day of Claimant, who was the regularly assigned Agent-Telegrapher at Eufaula, Oklahoma. Claim is made by her for eight hours for violation of Rules 1(a) and 1(d) of the Telegraphers' Agreement.

The Carrier contends that the telephone conversation between the Assistant Roadmaster and the Train Dispatcher was merely a message of information wherein the former reported a track condition. Carrier further contends that the conversation did not constitute a message of record nor did it control the movement of trains. Hence it reasons that the claim should be denied.

It is the Organization's position that the telephone message of the Assistant Roadmaster resulted in the issuance of the train order within

seven minutes thereafter and thereby affected train movements. The Organization points to Award 5792 of this Division, involving the same Rules and Parties, as support for its position that Telegraphers have the contractual right to handle such telephone communications.

We recognize the criteria announced in numerous Awards of this Board that "communications" must, of necessity "govern or affect the movement of trains over the road".

This Board is exceedingly aware of the findings in Award 5792 wherein this Organization and this Carrier were the Parties to the dispute. In the cited case the section foreman transmitted telephone message to the train dispatcher: "Issue order look out for rail and material \* \* \*." The Opinion therein held that Rule 1(d) was controlling. The issued Award sustained the claim.

We consider Award 5792 as precedent between the Parties which should be followed. Accordingly, the claim will be sustained.

**Claim No. 2.** Trainmaster utilized the telephone to advise Train Dispatcher that he was tying up and would be at Clinton Hotel.

Organization contends that the use of the telephone was in violation of Rules 1(a) and 1(d) of Telegraphers' Agreement.

Carrier contends that telephone conversation of Trainmaster was merely informational, in that it apprised the Train Dispatcher of the name of the hotel where the Trainmaster was planning to stay.

It is the conclusion of the Board that the telephone use by the Trainmaster did not constitute a violation of the Telegraphers' Agreement and we find no support for the claim. Accordingly, the claim will be denied.

**Claim No. 3.** On September 28, 1966, a K.O & G Trainmaster used the telephone to call a Train Dispatcher to obtain a train sight at Durant, Oklahoma, where the agent-telegrapher W. H. Niksch was employed but off duty. Claimant Niksch makes claim for compensation for a call (two hours at time and one-half) as set forth in the Agreement.

It is the position of the Organization that the Agreement was violated when an employee, not covered by the Agreement, was permitted to receive a communication of record from the Dispatcher. It asserts that Rules 1(a) and 1(d) were violated by such action.

It is the position of the Carrier that Telegraphers on this property do not have the inherent and exclusive right to use of telephone to handle train sights and lineups. Carrier further asserts that use of telephone to secure train sights in the instant case is not in violation of the Agreement but is in accordance with previous understanding between the Parties concerning the handling of motor car lineups.

A study of cited Awards in the Third Division relating to the type of matter in the instant dispute, reveals that Award 5765 between this Organization and this Carrier has rules upon the question involved herein. In Award 5765 it was held that Rule 1(d) was violated and compensation was accordingly awarded.

The Board finds that the Organization has sustained its burden of proof that Rule 1(d) of the Agreement was violated. The finding herein is addi-

tionally supported by Award 5765 between the instant Parties. Accordingly, the claim will 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 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 has been violated in Claims 1 and 3 and has not been violated in Claim 2.

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

Claims 1 and 3 are sustained. Claim 2 is denied.

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

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

Dated at Chicago, Illinois, this 30th day of April 1970.

#### **Carrier Members Dissent to Award 17849, Docket TE-17392**

The telephone conversation between an Assistant Roadmaster and a Train Dispatcher wherein the Train Dispatcher was advised of a broken rail did not constitute a train order; did not control the movement of a train; and was such that no written record had, or needed, to be made of it. The train order which was subsequently issued controlled the movement of trains not the telephone conversation. Accordingly, it was erroneous to hold that the telegrapher's Agreement was violated when other than a telegrapher, an assistant roadmaster, in carrying out the function of his position, held such a telephone conversation with a train dispatcher. Therefore we dissent.

/s/ **W. B. JONES**  
W. B. Jones

/s/ **R. E. BLACK**  
R. E. Black

/s/ **G. C. WHITE**  
G. C. White

/s/ **P. C. CARTER**  
P. C. Carter

/s/ **G. L. NAYLOR**  
G. L. Naylor