

 Award No. 18027

Docket No. TE-18515

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

ILLINOIS TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Illinois Terminal Railroad, that:

1. Carrier is violating the Agreement between the parties by requiring and/or permitting employes of a foreign railroad and employes outside the scope of the Agreement to handle train orders for Illinois Terminal trains operating over the Illinois Central Railroad from Mont Station to Springfield, Illinois.

2. Carrier shall, as a result, compensate an idle extra telegrapher, or if no extra telegrapher idle the available regularly assigned employe at LeClaire Tower observing rest day, a day's pay for each day violation continues, commencing September 22, 1968.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties effective December 16, 1957, as amended and supplemented, is on file with your Board and by this reference is made a part hereof.

Claim was timely presented, progressed, including conference with highest officer designated by the Carrier to receive appeals, and has remained declined. The Employes, therefore, appeal to your Honorable Board for adjudication.

The dispute arose when, following a derailment near Hamel, Illinois, on the Carrier's Peoria and Springfield Branch, the Illinois Terminal Railroad diverted trains between Mont Station, Illinois, and Springfield, Illinois, over the tracks of the Illinois Central Railroad. After the original cause of the diverting of trains to the Illinois Central between Mont Station and Springfield no longer existed, the Illinois Terminal Railroad made arrangements to continue this manner of operation, operating only one train per week over its own tracks between those stations and all others over the Illinois Central Railroad.

The general chairman of the petitioning union by letter dated September 30, 1968, filed a claim with Illinois Terminal for 8 hours' pay for an idle extra employe on the basis that these train orders should have been given to the crew thru an Illinois Terminal employe represented by the petitioning union.

The claim as submitted by the general chairman was denied initially and at each point of the appeal procedure, up to and including carrier's highest officer to handle claims and grievances in accordance with the provisions of the Railway Labor Act, as amended.

There is in effect an agreement between the petitioning Union and the Carrier bearing an effective date of December 16, 1957 which is on file with the National Railroad Adjustment Board -- Third Division and which agreement by reference hereto is made a part of this submission.

OPINION OF BOARD: Although the Statement of Claim alleges violation of the parties' Agreement occurred when employes of a foreign railroad and employes of this Carrier outside the scope of the Agreement handled train orders, the real dispute, as developed in the submissions to the Board, involves only the delivery of train orders at Mont Station to crews of the Carrier's trains operating over the rails of the Illinois Central between Mont and Springfield.

There is no material dispute about the relevant facts, which need not be repeated here. Carrier concedes that telegraphers have a right to copy and deliver train orders at stations where they are employed.

Both parties rely on Award 13805, which involved these same parties and a dispute about the copying of train orders by crew members. We have carefully read with great interest the Opinion of Board in that Award. With unusual clarity it sets out the Board's decision concerning the relative rights and obligations of the parties. It is noted that, unlike most cases, on this property the intent is to be ascertained from settlements on the property of previous claims. In Award 13805 a claim involving "Thermal No. 1" was sustained on the ground that Carrier had previously paid claims involving that point. A claim involving "Roxana" was denied on the ground that no previous claims had been paid for that point, although the Employees admitted that train orders had been handled there by crews on previous occasions.

Carrier rationalizes its payment of claims involving "Thermal No. 1" on the basis that this point is a part of the station of LeClaire, about a mile away. Mont, the point here involved, is about two miles from LeClaire. Carrier contends it is a separate station.

Applying the rationale of the decision in Award 13805, upon which both parties rely, the Employees, in order to prevail, must have shown that Mont is in fact a part of the station of LeClaire or another station at which previous claims have been paid; or that previous claims have been paid involving Mont itself. They have not done either. Consequently the claim must be denied.

Obviously, this decision is confined to the peculiar facts and circumstances of this case.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds: