

Award No. 18040

Docket No. TE-17381

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Pacific (Pacific Lines), that:

1. Carrier violated and continues to violate the terms of an agreement between the parties hereto, when sixty (60) days prior to the date on which this claim is filed it permitted or required a member of the Marysville Switcher, not covered by said agreement, to copy train orders or handle other matters of record before orally clearing their train with the train dispatcher at Roseville, California over the telephone before being permitted to leave home terminal Marysville, California.

2. *Carrier shall, because of the violation set forth above, compensate the senior extra telegrapher not working, or in the absence of such the senior available regularly assigned employe observing his rest days, a day's pay at the applicable rate, so long as the violation complained of continues.

The following telegraphers, with rest days shown, are available for the above claims:

C. L. Clark	Tue. & Wed.	S. A. Wagner	Tue. & Wed.
W. E. Watson	Sun. & Mon.	R. G. Warwick	Sun. & Mon.
R. K. Edgeman	Mon. & Tue.	R. W. Cartmill	Fri. & Sat.
C. M. Thompson	Wed. & Thur.	E. F. Smith	Wed. & Thur.
A. C. Akerly	Tue. & Wed.	M. M. Milne	Sun. & Mon.
E. J. Morgan	Sat. & Sun.	P. E. Wagner	Tue. & Wed.
E. C. Dyer	Fri. & Sat.	F. E. Alexander	Fri. & Sat.
C. L. Wells	Thur. & Fri.	D. G. Bouequet	Wed. & Thur.
E. H. McManus	Fri. & Sat.		

3. A joint check of the Carrier's records, to identify the proper claimant or claimants is requested.

* See Statement of Facts for adjustment in compensation demanded.

vised the conductor concerning track conditions as required by Rule 781. In this connection there is no requirement for nor do we agree that the conductor involved copied any orders as contended by you. The flow of information between conductor of said train and the train dispatcher as set forth in your letter, contrary to your contention, is system practice dating back some 35 years under CTC operation. Rule 781 of the Rules and Regulations of the Transportation Department is particularly involved. This rule was followed in the instant case in the same manner as has been done over the entire system of the Carrier since the inception of the CTC rules, during which time your organization has never contended, nor does Carrier concede such handling to be handling train orders within the meaning and intent of Rule 29 of the current agreement or handling of communications of record as that term has been used.

"None of the work claimed herein in any way involved or contravened rights exclusively reserved to telegraphers on this property; therefore, the claim is not supported by any agreement or other reference cited by you and it is denied."

(Exhibits not reproduced.)

OPINION OF BOARD: This claim asserts violation of the parties' agreement occurs when a train service employe communicates with a train dispatcher by telephone and allegedly copies train orders or handles other matters of record at Marysville, California.

Monetary claims in favor of seventeen regular assigned employes at other stations were made on the basis that they could have performed the work in question on their rest days.

No dates of specific claim are stated. The claim merely makes a general allegation and asks reparation retroactively for sixty days prior to the filing date, and prospectively into the future until the alleged violation is discontinued.

This Board has often enunciated the principle that the burden of establishing facts and evidence upon which a decision is requested rests with the petitioner. In our opinion the record here falls far short of meeting such burden. Therefore, without expressing any opinion concerning the merits of the parties' contentions concerning use of the telephone in CTC territory, we will dismiss this claim for failure of proof.

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