

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis X. Quinn, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION DIVISION, BRAC
CENTRAL VERMONT RAILWAY, INC.**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Central Vermont Railway, that:

For the senior idle operator, spare man in preference, to be paid one day's pay on a 24-hour basis at applicable rate on each day beginning August 12, 1968, that such OS report and other communication of record is made by a member other than from our craft at Fonda Junction. This to be a continuing claim on each subsequent date that the violation occurs.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is predicated upon various provisions of the collective bargaining agreement entered into by the parties hereto, effective April 1, 1951, as amended and supplemented, and by this reference is made a part hereof.

The dispute was handled in the usual manner on the property, including conference, December 17, 1968, up to and including the highest officer of the Carrier designated to handle claims and grievances, and remains unsettled.

The controversy arose because Carrier permitted employees not under the parties' agreement to make "OS" report of trains and other specific communications of record to the train dispatcher at Fonda, Vermont.

Carrier contends that the information supplied was only a matter between two railroads and had nothing to do with the movement of trains or train orders.

Employees contend that the requiring of employees who are not under the Telegraphers' Agreement to "OS" trains and give other information to dispatcher violates the Telegraphers' Agreement.

Johnsbury and Lamoille County Railroad's trains operate on any Central Vermont trackage. There is no St. Johnsbury and Lamoille County Agency at Fonda Junction, Vermont. Similarly, there is no Central Vermont Agency or station at Fonda Junction.

OPINION OF BOARD: This claim involves a contention of the Employees that during the period between August 12, 1968 and January 24, 1969, the conductor of a connecting railroad's train used this Carrier's telephone to transmit to its dispatcher "OS" reports and "other communication of record", in violation of the Agreement.

It seems that for many years the St. Johnsbury and Lamoille County Railroad delivered cars, in interchange with the Central Vermont Railway, at Swanton, Vermont, where a telegrapher reported the time and other essential information to the train dispatcher. On August 12, 1968, a change in operation was effected whereby the interchange was made at Fonda Junction, a place where no telegrapher was employed. The conductor then, instead of giving the information to an employee of this Carrier, as he formerly did, for transmission to the dispatcher, used the telephone himself to give the dispatcher the information. The St. J&LC trains did not at any time operate on or use the tracks of the Central Vermont. The Carrier put a stop to this method of handling the matter on January 24, 1969, thus terminating the cause of complaint.

After a careful study of the record and awards dealing with "OS" reports and other communication work, we are of the opinion that there was no "OS" report involved in the communications between the conductor and the dispatcher. We further find that the Employees have failed to establish that other matters included in the conversations were "of record". And, since it is well established that the burden of producing supporting evidence is on the petitioner, the claim necessarily must be dismissed for failure of proof.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 there is no showing of Agreement violation.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of September 1970.

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