

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC on the Missouri-Kansas-Texas Railroad Company, that:

1. The agreement between the parties was violated when Conductor Doyle on Train No. 5, just south of Kincaid, at 9:23 A.M., Saturday, November 9, 1968, received, copied, repeated and handled Train Order No. 56 addressed to his train.

2. Carrier shall compensate W. R. Ryman, Agent, Kincaid, Kansas, in the amount of a two-hour call at time and one-half rate.

EMPLOYES' STATEMENT OF FACTS:**(a) STATEMENT OF THE CASE**

The dispute herein is predicated on various provisions of the collective bargaining agreement entered into by the parties effective September 1, 1969. Claim was submitted to the proper officers of the Carrier, at the time and in the usual manner of handling, as required by agreement rules and applicable provisions of law. The claim was discussed in conference between representatives of the parties on April 22, 1969.

The controversy arose on November 9, 1968 when a train dispatcher issued Train Order No. 56 to a telegrapher at North Yard, Parsons, Kansas, and instructed the telegrapher to relay the order via radio-telephone to the conductor of Train No. 4. That northbound train had departed North Yard and when the conductor received the train order was just south of Kincaid, Kansas, the claimant's headquarters.

Employees contended in the handling on the property, and now contend, that certain provisions of the collective bargaining agreement were violated. (These provisions are set out in Section (d) hereof, Rules Relied On.) Carrier contended essentially:

"... the train order as handled was in complete compliance with the current working agreement as it was handled through a mem-

CARRIER'S STATEMENT OF FACTS: On the morning of November 9, 1968, at about 4:15 A.M., Dispatcher J. R. Nash issued Form "X" Train Order No. 571 to Operator "J" at North Yard (Parsons), Kansas, addressed to C&E Northward Trains Kansas City Subdivision, reading as follows:

"Broken angle bars East rail MP A-64 pole 25, know track is safe before passing over."

Train No. 4 with the above train order in hand departed North Yard at 8:35 A.M., November 9, 1968. Shortly before 9:20 A.M., the dispatcher on duty, Clarence Clark, was notified that the angle bars at MP A-64 pole 25 had been replaced and the track was safe for normal traffic. Dispatcher Clark then issued Train Order No. 56, addressed to C&E North Yard Operator and No. 4 via radio; said train order reading as follows:

"Order No. 571 is annulled."

The Telegrapher at North Yard (Parsons), Kansas was instructed by the Dispatcher to relay this train order to the Conductor on Train No. 4 via radio as prescribed by Uniform Code of Operating Rules 206(b) and 206(c). The Telegrapher at North Yard (Parsons) complied with those instructions and Train Order No. 56 was relayed as prescribed by the rules to Conductor Doyle on Katy Train No. 4 while enroute between North Yard (Parsons) and Glen Park, Kansas.

Saturday, November 9, 1968, was a rest day of Claimant, and the station at Kincaid, Kansas closed.

November 12, 1968, General Chairman A. W. Riley submitted time claim, to Superintendent T. G. Todd, in favor of Agent W. R. Ryman, Kincaid, Kansas, for a two (2) hour call at the time and one-half rate, alleging Carrier violated Rules 1(a) and 1(e) of the Telegraphers' Agreement, when it allowed and/or permitted a train order to be relayed by the telegrapher at North Yard (Parsons), Kansas to Conductor Doyle on Katy Train No. 4 while enroute between North Yard (Parsons) and Glen Park, Kansas, but south of Kincaid, Kansas.

The claim was declined by Superintendent Todd on December 18, 1968; the General Chairman then wrote Superintendent Todd again on December 23, 1968, requesting that he reconsider and allow said claim, and by letter dated January 1, 1969, Superintendent Todd reaffirmed his declination of December 18, 1968, and set forth additional reasons therefor. General Chairman Riley appealed this claim to the Manager of Personnel on January 27, 1969; was declined by the undersigned on March 25, 1969; discussed and declined in conference with the undersigned on April 22, 1969.

Attached hereto and made a part hereof is copy of all correspondence exchanged by the parties in handling this matter as Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim herein arose in connection with the handling of a train order on November 9, 1968. The train dispatcher issued Train Order No. 56 to a telegrapher at North Yard, Parsons, Kansas, and instructed the telegrapher to relay the order via radio-telephone to the conductor of Train No. 4. Train No. 4 had departed North Yard and when the

conductor received the train order, was, according to Petitioner, just south of Kincaid, Kansas, where claimant was employed. November 9, 1968 was Saturday, a rest day of claimant, who was assigned to five-day position of agent at Kincaid, 8:30 A. M. to 5:30 P. M. daily except Saturday and Sunday.

The Petitioner relies upon Rule 1(a) - Scope, Rule 1(e) - the so-called standard train order rule, and Rule 26 - Section 1(m) - Service on Rest Days.

Rule 1(a) is a general type scope rule, which does not define or describe the duties of employees. Rule 1(e), by its terms, is applicable at telegraph or telephone offices where a telegrapher is employed and is available or can be promptly located. There is no proof by the Petitioner that the train order involved was handled by the conductor at a telegraph or telephone office as referred to in Rule 1(e). The claim will, therefore, be denied.

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October 1970.