

Award No. 18297
Docket No. TE-18493

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Chicago, Rock Island and Pacific Railroad, that:

(1) Carrier violated the Agreement between the parties when, on March 20, 1968, it required and/or permitted an employe not covered thereby to use the telephone at Silvis, Illinois to transmit information relating to train movement.

(2) Carrier shall, as a result, compensate J. F. Haas, Telegrapher, who was idle and available to perform the work, a two hour call.

EMPLOYEES' STATEMENT OF FACTS: Petitioner and respondent are parties to a collective bargaining Agreement, negotiated and entered into under provisions of the Railway Labor Act. The dispute herein involves interpretation of said Agreement, and was handled on the property through the highest officer designated by carrier to handle such disputes, and failed of adjustment. Conference between the parties at the highest level was held on September 26, 1968. Third Division, National Railroad Adjustment Board, has jurisdiction of this dispute.

The dispute involves diversion of work. During the handling on the property there were no procedural questions raised by either party.

At 7:03 P.M., March 20, 1968, J. Bates, Yardmaster at Silvis, Illinois, reported movement of Train No. 87 direct to J. L. Vandee, East Iowa Train Dispatcher, located at Des Moines, Iowa, as follows:

"Well here it is Dispatcher

He has 50-77-5525 49 cars for Almstead

160 car lengths long

Here he comes"

As a result of the Yardmaster at Silvis using the telephone to handle the communication concerning the movement of Train No. 87 westward from

Agent-Telephoners
Telegraphers
Telephone Operators (Except telephone switchboard operators)
Relay Managers
Manager Wire Chiefs
Wire Chiefs
Traffic Chiefs
Printer and Teletype Operators
Tower and Train Directors
Towermen
Levermen
Block Operators
herein referred to as 'telegrapher(s)' and/or 'employee(s)'."

In addition, Rule 13, "Overtime Calls, Suspension of Work", and Rule 16, "The 40 Hour Week", were cited by Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: On March 20, 1968, the Yardmaster at Silvis, Illinois, telephoned the following message to the Dispatcher at Des Moines, Iowa:

"Well here it is Dispatcher
He has 50-77-5525 49 cars for Almstead
160 car lengths long
Here he comes"

Claim was presented on the basis that this information was a communication of record, in violation of Rules 1 (Scope), 13 (Overtime, Calls, Suspension of Work) and 16 (40 Hour Week) of the Agreement. It was denied by the Superintendent because "this type of information is not made a matter of record, but is only information for train dispatcher handling or spotting of trains. . . ."

In a letter dated May 10, 1968, the General Chairman wrote to Carrier's highest appeals officer, in part, as follows:

" . . . In determining whether communications are of the kind, the handling of which is traditionally reserved for the employes, the test to be applied is whether they are directly related to the control of transportation. The information transmitted is analogous to reporting train departure time which is recorded and made a matter of record. . . ."

Replying thereto after a conference, Carrier again stated that "the information furnished the dispatcher by the yardmaster was for information and for the purpose of exchanging information relating to their regular duties only and was not made a matter of record, nor did they affect the movement or operation of trains, and that under those circumstances, it could not be considered a message of record as you contend."

The burden of proof to show that the message was a communication of record is upon the Petitioner. And the Petitioner has not met that obligation. The message, on its face, does not relate to the movement of the train, nor does it affect the safety of persons and/or property. There is no convincing evidence in the record that the message "is analogous to reporting train departure time." Such an implication is without basis of fact. In the absence of evidence to the contrary, the message was informational only and is, therefore, not a communication of record.

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

That the parties waved 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1970.