



Award No. 18389

Docket No. TE-18762

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC

**SOUTHERN PACIFIC TRANSPORTATION COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Southern Pacific Company (Pacific Lines), T-C 5730, that:

1. Carrier violated the terms of an agreement between the parties hereto, September 14, 15, 16, 18, 21, 22, 23, 24, 25, 30, October 5, 6, 7, 13, 14 and 15, 1964, when it required or permitted employes, not covered by the parties' Agreement, at Oakridge, Oregon, to perform work covered by said Agreement.

2. Carrier shall, because of the violations set forth above, compensate the senior idle available extra Telegrapher on the Portland Division, as prescribed by the applicable rules; if no extra Telegrapher available, then the senior regular assigned Telegrapher nearest to the point of violation, who was available and had no earnings for dates set forth.

3. Consent to and cooperate in a joint check of the Carrier's records; to determine the facts in any dispute of facts which arise in the course of settling this dispute; including but not limited to determination of identity of appropriate claimants, rates which claimants are to be paid; amounts due claimants and certification of payments due claimants.

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is predicated upon the provisions of the collective bargaining agreement between the parties, effective December 1, 1944, as amended and supplemented.

The claim arose when Conductors going on duty and off duty at Oakridge, Oregon telephoned the Train Dispatcher from that location; copied a train order and transmitted certain information while the Agent was off duty. The Employees maintain that the train order and train information

approximately 20 to 30 miles west of Oakridge between Wicopee and Frazier. Both work train crews were called on duty at Oakridge either at 4:00 A. M. or 3:30 A. M. and returned to Oakridge on completion of run on each date specified, at which point both work trains tied up.

4. By letter dated November 10, 1964 (Carrier's Exhibit "A"), Petitioner's District Chairman presented claim to Carrier's Division Superintendent in behalf of the senior available extra telegrapher on the Portland Division and/or senior regular assigned telegrapher nearest the point of alleged violation (further claiming that identity and rate of pay of such claimants to be determined by a point check of records) when Carrier failed to assign a telegrapher employe to accompany work trains that commenced service and tied up at Oakridge commencing September 15, 1964, and subsequent dates as specified. In addition thereto, claim for one day's pay for September 14, 1964, when a work train conductor at Oakridge talked to the train dispatcher by telephone and obtained an alleged train order.

By letter dated December 29, 1964 (Carrier's Exhibit "B"), Carrier's Division Superintendent denied the claim and by letter dated January 13, 1965 (Carrier's Exhibit "C"), Petitioner's District Chairman gave notice that the claim would be appealed.

By letter dated February 17, 1965 (Carrier's Exhibit "D"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated September 15, 1969 (Carrier's Exhibit "E"), the latter denied the claim, directing specific attention to the procedural defects evident in the claim, by stating as follows:

"The entire claim having been presented for unidentified claimants fails to meet the requirements of Article V of the August 21, 1954, Agreement, and therefore is not a proper claim and is not properly before us. There is further no agreement basis for your request for joint check of records to develop your claim and such request is denied."

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves contentions by the Employees that telephone communications between conductors and dispatchers concerning work trains at Oakridge, Oregon, involved work reserved to telegraphers and, therefore, amounted to violation of the agreement.

Among Carrier's defenses is a motion to dismiss the claim for procedural error on the ground that the claim submitted to the Board is not the same claim as that handled and appealed on the property, the contention being that the Railway Labor Act and Circular No. 1 of this Board confine the Board's authority to issues that were raised and made a part of the dispute during handling on the property.

The Employees respond to this argument by insisting that while there are some variances in the form of the claim such variances are not fatal because the substance or subject matter has been the same throughout its handling. They cite a number of awards in support of their contention.

The difficulty with the Employees' argument on this point, however, is that they have not satisfactorily shown the variances to be inconsequential.

The basic claim asserted and handled on the property alleged violation of a specific agreement provision requiring use of a telegrapher to accompany a work train when it is known that such train will tie up at other than an established train order office. But the claim submitted to the Board does not mention or refer to this specific provision. Instead, it broadly alleges violation of telegraphers' work rights by the character of the work and the manner in which it was performed. Such an allegation raises issues entirely different from those inherent in the claim as asserted and handled on the property.

In agreement with many prior awards, such as 10749, 11904, 13235, 13664, 14747, 15019, 15063, 15449, 16251 and 16607, we must sustain the Carrier's motion and dismiss the claim, without expressing any opinion concerning other aspects of the dispute. See, also, Award 18322, involving these same parties.

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 claim must be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1971.