



Award No. 18518
Docket No. TE-18849

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Thomas Rimer, Jr., Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Denver & Rio Grande Western Railroad Company, T-C 5761, that:

1. Carrier violated the Telegraphers' Agreement on Monday, August 4, 1969, when it allowed, required or permitted a trainman, an employee not covered by the Agreement to handle (receive, copy and deliver) a train order at Soldier Summit, Utah.

2. Carrier shall now compensate Telegrapher A. Wieland a "call" of three (3) hours' pay at the pro rata rate of his regular position at Helper, Utah, account the above violation.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The instant dispute concerns a communication transmitted by a Train Dispatcher of the Carrier and received by a train service employee. The incident which precipitated the claim was brought about by a derailment of another train. The communication involved pertained to the movement, control and operation of the train which received the information, as well as the safety of persons and property and, except for assigning a number, the communication was identical to information issued in the form of Train Orders to trains at other locations.

The Employees contend that the handling of the communication in question belongs to them by virtue of its functional importance, as well as its substance, and that the Agreement Rules prohibit other than Telegraphers from handling such communications in the circumstances such as are involved here. The claim was timely filed and thereafter handled in the usual manner up to and including the highest officer designated by Carrier to handle claims. It was discussed in conference on September 16, 1969 after which Carrier to handle claims. It was discussed in conference on September 16, 1969 after which Carrier reaffirmed its previous declination.

(f) AUTHORITIES RELIED ON

6639.....(Bakke — May 1954)
10435.....(Miller — March 1962)
10699.....(Hall — July 1962)
11163.....(Sheridan — February 1963)
11298.....(Moore — April 1963)
12640.....(West — June 1964)
15934.....(Heskett — November 1967)
16012.....(McGovern — December 1967)
16111.....(McGovern — March 1968)
16123.....(Friedman — March 1968)

Awards No. 39 and 52 of Public Law Board No. 34 -(Dorsey)

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Soldier Summit, Utah, is located approximately 25 miles west of Helper, Utah, and approximately 50 miles east of Provo, Utah. Telegraphers are employed at both Helper and Provo, Utah, but there are no telegraphers employed at Soldier Summit, Utah, as this station was closed September 1, 1964.

The main line from Provo, Utah, to approximately 2 miles west of Helper, Utah, is joint with the Utah Railway Company.

On the morning of August 4, 1969, a Utah Railway train, Extra 302 East, was derailed at Colton, Utah, about 3 miles east of Soldier Summit, Utah. This derailment caused track damage which required a 10 miles per hour slow order until repairs were made.

Extra 5326 East, on which Trainman Koestel was employed, had passed Provo, Utah, before train dispatcher issued Order 596 restricting speed to 10 miles per hour between Mile Post 648.5 and Mile Post 645.5.

Extra 5326 East was stopped at Soldier Summit, Utah, by a red block and when Trainman Koestel called to ascertain the reason for this red block dispatcher informed him that a Utah Railway train was derailed ahead of his train and that speed of ten miles per hour should not be exceeded. No train order was issued to Extra 5326 East at Soldier Summit. Accordingly Trainman Koestel was neither required nor permitted to copy a train order at Soldier Summit.

Attached as Carrier's Exhibits "A" through "K" are copies of correspondence exchanged on the property in regard to this dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts in the case are not in dispute, although the chronology of events is not precisely clear in the record. On the morning of August 4, 1969 a train was derailed on a single track section at Colton, Utah causing track damage. As a result a 10 miles per hour slow order was issued until repairs could be completed.

A train identified as Extra 5326 East was stopped by a red block signal at Soldier Summit, Utah. A Trainman called the Dispatcher to learn the

reason for the block and was advised of the derailment and the 10 miles per hour slow order. The Petitioner claims that such communication was a violation of the Scope Rule 21 reproduced below:

"RULE 1.

SCOPE This agreement will govern the employment and compensation of telegraphers, printer operators (operating teletype machines used exclusively in transmission and reception of telegraphic matters and located in offices equipped with telegraph facilities), Telephone Operators (except Switchboard Operators), Agent-Telegraphers, Agent-Telephoners, Levermen, Towermen, Tower and Train Directors, Block Operators, Agents and occupants of any other positions listed in the wage schedule, subject to exceptions noted below, and will supersede all previous schedules, agreements and rules thereon.

EXCEPTIONS:

1. This agreement does not apply to positions of supervisory agents at Denver, Colorado Springs, Pueblo, Salida, Leadville, Alamosa, Grand Junction, Salt Lake City and Ogden.

2. This agreement does not apply to the operation of printer telegraph machines, teletype or other mechanical machines used for transmitting and receiving communications of record, used solely for the purpose of communicating between offices in the same town or city where such machines are not located in Telegraph Offices, and provided such machines are not connected to reperforators, repeaters, or through circuits."

"RULE 21.

TRAIN ORDERS AND TELEPHONES

No employes other than covered by this Contract and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where a telegrapher is employed and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call.

(B) If instructed by train dispatcher or other authority to clear train before going off duty, leaving clearance card and/or orders in some specified place for those to whom addressed, the employe shall be paid a call as provided in Rule 8 for each train cleared.

(C) Mediation Agreement Case A-757, May 13, 1940:

1. Train and engine service employes will not be required or permitted to transmit or receive train orders, clearances, written messages, or to block or report trains by telephone or telegraph, except in emergency.

It is further understood and agreed that,

2. The word 'emergency' as used in the preceding paragraph is construed to mean: storms, accidents, including

delays to trains due to engine or equipment failures, break-in-two, obstructions caused by wrecks, washouts, high water, slides, snow blockades, or other unforeseen occurrences arising where life or property may be in jeopardy requiring immediate attention, which could not have been anticipated when train was at previous open telegraph office, and which would result in serious train delays.

3. The copying of instructions relative to throwing switches, and/or entering or occupying main track in Centralized Traffic Control territory, or the copying of permissive cards in Automatic Block Signal territory will not be construed as violation of this agreement.

NOTE: In the application of item 1 of Paragraph (C), when it is apparent a train will be delayed by nonarrival of another train at the meeting or passing point for thirty minutes or more, dispatcher will be contacted, and if an emergency exists, as defined in item 2 of Paragraph (C), train orders may be issued for the movement of the delayed train."

The position of the Carrier, as stated, denied that the telephone conversation resulting from the red block was a "train order" within the meaning of Rule 21, and that, in any case, an emergency existed which required the action to be taken and is permitted under the contract.

A careful reading of the record brings the Board to the conclusion that a "train order" was issued at the point of the red block at Soldier Summit, and was, without extenuation, a violation of Rule 21. Thus, the claim can be determined as valid only if it is shown that no emergency existed as such is defined in that Rule and which could have been anticipated when the train was at the last previous open telegraph office.

During handling on the property the Carrier contended that the derailment and its attendant track damage constituted an "emergency" within the definition of that term as contained in Rule 21(C)2. The undisputed facts of the case, to the extent revealed by the record, in our opinion, were sufficient to establish prima facie validity of this portion of the Carrier's defense.

In their effort to overcome this defense, the Employees cited Award 6639, between these same parties, contending that this award shows that a derailment and track damage is not an "emergency" unless the circumstances were unknown when the train to be notified passed the "previous open telegraph office."

The Employees' argument is sound and in accord with the decision in Award 6639. Here, however, they failed to implement their argument by any showing that the circumstances requiring the issuance of the slow order were known before Extra 5326 East passed Provo, the "previous open telegraph office."

Since the burden of establishing, by evidence of probative value, all essential elements of its claim rests with the Petitioner, a burden which has not been appropriately met, this claim must 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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1971.