

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19389
Docket Number TE-18152

Joseph E. Cole, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
((Formerly Transportation-Communication Employees Union)

PARTIES TO DISPUTE: (

(The Kansas City Southern Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on The Kansas City Southern Railway Company - Louisiana & Arkansas Railway Company, that:

CLAIM NO. 1

1. Carrier violated the terms of the Telegraphers' Agreement when on September 14, 1967 it required or permitted employees not covered therein to transmit communication of record.

2. Carrier shall compensate CTC Telegrapher C. A. Lewis, Jr., for one call of three hours at the rate of \$3.1319 per hour due to order in item three performed in violation of Telegraphers' Agreement.

3. Following order given by Chief Dispatcher Mr. L. M. Hough to Conductor L. W. Nash via micro-wave radio. "To Cond. Nash on Extra 112 South Local between Deramus Yard and Mansfield. Give Fisher 5 racks and rest to Florian." This violation at 9:45 A.M. September 14, 1967.

CLAIM NO. 2

1. Carrier violated the terms of the Telegraphers' Agreement when, on September 14, 1967 at 12:57 P.M., it required or permitted employees not covered therein to transmit communication of record.

2. Carrier shall compensate C. A. Lewis, Jr., CTC Telegrapher at Deramus Yard, for one call of 3 hours at the rate of \$3.1319 per hour due to order in item three performed in violation of Telegraphers' Agreement.

3. Following order given by Trick Dispatcher T. A. Tucker to Engineer H. F. Herrell on No. 15 outbound Shreveport. "Pick up one GP 30 Engine at Leesville." This occurrence at 12:57 P.M., September 14, 1967.

CLAIM NO. 3

1. Carrier violated the terms of the Telegraphers' Agreement when on September 28, 1967, it required or permitted employees not covered therein to transmit a communication of record.

2. Carrier shall compensate CTC Telegrapher K. L. Prothro of Deramus Yard Office for one call of three hours at the rate of \$3.1319 per hour due to order in item 3 performed in violation of Telegraphers' Agreement.

3. Following order given by Chief Dispatcher Mr. L. M. Hough to Conductor T. E. Minx on Work Extra 89 North in Deramus Yard via micro-wave radio, "Hello Tom Minx, it will not be necessary to go into Brian today." "Okay Mr. Hough," replied Conductor Minx. This occurrence at 11:50 A.M.

CLAIM NO. 4

1. Carrier violated the terms of the Telegraphers' Agreement when on September 28, 1967, it required or permitted employees not covered therein to handle communication of record.

2. Carrier shall compensate Telegrapher J. L. Craig of Dequeen, Arkansas for one call of three hours at the rate of \$2.9639 per hour due to item three order performed in violation of Telegraphers' Agreement.

3. Following order given to Agent J. M. Whisenhunt, Dequeen, Arkansas by Chief Dispatcher Mr. L. M. Hough who told him to make the following note and have Telegrapher J. L. Craig make message reading "C&E No. 41 at Dequeen: File to 225 cars if necessary to clean out Ashdown. 852 am."

CLAIM NO. 5

1. Carrier violated the terms of the Telegraphers' Agreement when on October 4, 1967, it required or permitted employees not covered therein to handle communication of record.

2. Carrier shall compensate CTC Telegrapher C. A. Lewis, Jr., of Deramus Yard Office for one call of three hours at the rate of \$3.1319 per hour due to order in item three performed in violation of Telegraphers' Agreement.

3. Following order given by Chief Dispatcher, Mr. L. M. Hough, to Conductor A. R. Norwood on Extra 609 North at Deramus Yard via micro-wave radio, "Set out the Ashdown cars where handy and spot them up in A.M. as come south." This occurrence at 12:50 P.M.

CLAIM NO. 6

1. Carrier violated the terms of the Telegraphers' Agreement when on October 17, 1967, it required or permitted employees not covered therein to handle communication of record.

2. Carrier shall compensate CTC Telegrapher C. A. Lewis, Jr., of Deramus Yard Office for one call of 3 hours at the rate of \$3.1319 per hour due to order in item three performed in violation of the Telegraphers' Agreement.

3. Following order given by Chief Dispatcher Mr. L. M. Hough to Yardmaster H. J. Vaughn via micro-wave radio, "Send Wickes 4 old wood racks." This violation at 8:35 A.M.

Carrier File: 0.13-134 (1). Committee File KC-107

CLAIM NO. 7

1. Carrier violated the terms of the Telegraphers' Agreement when on December 20, 1967 it required or permitted employees not covered therein to transmit a communication of record.

2. Carrier shall compensate C. A. Lewis, Jr., for one call of three hours at the rate of \$3.1319 per hour due to transmission of order quoted in item 3 of this claim.

3. Following order given by Chief Dispatcher Mr. L. M. Hough to Conductor Crager of Extra 72 South at 9:16 A.M., December 20, 1967: "Don't take any wood racks to Leesville. Leave stored on line somewhere. Too many cars at Leesville."

Carrier File: 013.35-134 (3). Committee File KC-123.

OPINION OF BOARD: 1. According to the record, the subject communications were not made a matter of record by the railroad.

2. The messages in this matter are not Train Orders as contemplated by 1-3 of the Agreement.

3. Train orders of record are the exclusive province to the Telegrapher

4. The current complaints are not the exclusive province of the telegraphers.

5. It becomes apparent in the record that the messages listed in this complaint had nothing to do with the safety of the operation of the railroad. They were messages that conveyed immediate information, and in some cases, called for return information. If they had not been sent, or had not been received, it is shown in the record that there would have been, at most, irritation, and some inefficiency, but no danger to the operation of the railroad.

6. These conversations are not the exclusive property of the Telegrapher as they are not train orders of record, nor do they have to be, but are conversations that were used for the more orderly running of the carrier, but not concerned with the movements of trains.

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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 has not been violated.

A W A R D

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. G. Kallen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of September 1972.

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H. G. HARPER

CONCURRING OPINION OF CARRIER MEMBERS, AWARD 19389, DOCKET TE-18152

(Referee Cole)

This award is correct in holding that the communications involved in this claim were not train orders and were not work to which claimants had exclusive rights. However, the finding in the award that "Train orders of record are the exclusive province to the Telegraphers" requires qualification. This statement must be restricted to those situations which fall within the purview of Rule 1-3 as interpreted by the parties. See our Award 17230 (Dugan) which involved these same parties and agreement.

H. F. Naylor

Wm B. Brinkwood

P. C. Carter

H. B. Jones