

NATIONAL RAILROAD **ADJUSTMENT** BOARD

THIRD DIVISION

Award Number 20173
Docket **Number** CL-20166

Dana E. Eischen, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, **Express** and
(Station **Employees**

PARTIES TO DISPUTE: (

(**The** Texas and Pacific Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-7263) that:

1. Carrier violated the Telegraphers' Agreement (**TCU**) and in particular, Paragraph **5** of the June 3, 1966 Memorandum Agreement, when, on April 19, 1971, it required an employee not covered by the Telegraphers' Agreement (**TCU**) to receive **and** copy Train Order No. 37, at **Mansura Junction**, Louisiana, a location and/or point where no Telegrapher covered by the Agreement is employed, and then failed and refused to compensate Claimant C. E. **Dowden**, as required by Paragraph **5** of the June 3, 1966 Memorandum Agreement.

2. Carrier shall now be required to compensate Mr. C. E. **Dowden** four hours' pay, as required by the **June** 3, 1966 Memorandum Agreement, Paragraph **5**.

OPINION OF BOARD: There is a general Rules Agreement in effect between the parties, effective May 15, 1950. The instant dispute concerns the application and interpretation of a Memorandum Agreement dated **June** 3, 1966 which amended Article 20(d) of the general Rules Agreement, effective July 1, 1966. The relevant Agreement language reads **as** follows:

"MEMORANDUM OF AGREEMENT

between

THE TEXAS **AND** PACIFIC RAILWAY COMPANY

and

TRANSPORTATION-COMMUNICATION **EMPLOYEES** UNION

(Formerly The Order of Railroad Telegraphers)

Effective July 1, 1966, Article 20 (**d**) - HANDLING TRAIN ORDERS, of the Agreement between the Parties which became effective May 15, 1950, is hereby amended to read as follows:

(1) No **employee** other than covered by this Agreement and train dispatchers will be permitted to handle train **orders** at telegraph or telephone offices where an operator 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. The **employee** entitled to call **will** be notified.

"* * * * *

(5) If train orders are handled by persons other than those specified in Paragraph (1) of this rule in other than emergencies as defined in Paragraph (b) of this rule at a location where an **employee** under this agreement is not employed, a telegrapher to be designated by the District Chairman will be allowed four hours pay at the minimum Telegraphers' rate applicable on the division. Four hours pay shall be applicable to each location in any consecutive four hour period regardless of the **number** of orders handled. **The** Carrier will notify the District **Chairman** of each such train order handled with a copy to the General Chairman.

(6) Emergencies, as referred to in Paragraph (5) of this Article, shall include only casualties or accidents, storms, engine failure, wrecks, obstruction to tracks, washouts, tornadoes, slides, or unusual delays which could not have been anticipated by the Dispatcher when the train was at the last previous open telegraph office, and which would result in serious delay to traffic.

* * * * *

Mansura Junction is located on Carrier's **Avoyelles** Subdivision - **DeQuincy** Division, on a "loop" between **Bunkie**, Louisiana and **Addis**, Louisiana. The record indicates that Texas and Pacific Railway Company (T&P) ~~telegrapher positions~~ at **Mansura** Junction and other stations have been abolished but that T&P telegraphers are still employed at both **Bunkie** and **Addis**, Louisiana. Claimant **C. E. Dowden** is regularly assigned to a position of Telegraph Operator at **Bunkie**, Louisiana with an established seniority date of January 21, 1950. The loop of track from **Bunkie** to **Addis**, through **Mansura** Junction, **Simmesport** and **Lobdell** Junction is owned by the T&P but largely leased and controlled by the Louisiana and Arkansas Railway Company (**L&A**). Train movement on the loop is directed by **L&A** train dispatchers located at **Shreveport**.

On April 17, 1971 the **L&A** dispatcher issued an identical order --Train Order No. 37-- to T&P Extra No. **351** southbound at **Mansura** Junction and to **L&A** No. 42 northbound at **Simmesport**. Order No. 37 was received and copied by the Conductor of Extra No. 351 at **Mansura** Junction. This handling of an order by the Conductor is the gravamen of the instant claim. Subsequently, on April 23, 1971 the Organization filed the instant claim pursuant to Paragraph S of the Memorandum Agreement, in a letter which reads as follows:

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**"TRANSPORTATION-COMMUNICATION DIVISION NO. 25
BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS**

Date April 23, 1971
File 1011

To: Mr. C. Percy Jr.
Superintendent
T&P **RR**
502 Union Station
Houston, Texas

Dear Sir:

At or about **1212P.M.** on the date of April **19th**, 1971, an employee not covered by the Telegraphers Agreement under the Scope Rule handled train order No. 37 at **Mansura Jct., La.**

There **was** no emergency involved, therefore, I hereby designate Telegrapher C. E. **Dowden, Bunkie, La.** to receive a call payment at the applicable rate for this violation as provided for by Memorandum of Agreement between the Carrier and this Organization.

Please advise payroll period on which payment **will** be made.

Yours very truly,

**VERNON WESTER /S /
District Chairman**

Train Order No. 73 37
April **19th**, 1972
No. 42 **Eng. 80** Wait at **Simmesport**
until **115PM** For extra T&P 351 South.
Order to No. 42 at **Simmesport.**
B.J.H.
Com. 1212PM

Box 355
Provencal, Louisiana

cc: - R. J. Upson,
General Chairman"

The claim was handled through **the** appropriate steps on the property and following denial by Carrier comes before our Board.

Both Carrier and Organization rely heavily in support of their positions upon their respective views of one another's prior handling of allegedly similar claims. The Organization strongly contends that Carrier's position on the instant claim is obviated by a letter of February 27, 1971, wherein Carrier agreed to apply the provisions of the Memorandum

Agreement to Mansura and **Lobdell** Junctions, and, accordingly, honored several penalty pay claims like the instant claim. Carrier, on the other hand, argues that said letter and payment was an ad hoc effort to settle a docket of backlogged claims and not a prospective letter of agreement. **Moreover**, Carrier asserts that the Organization's position is compromised by a February 1970 withdrawal of several claims like the instant claim.

We are not persuaded by either of the foregoing contentions nor by the prior awards cited in their behalf. The guiding principle **in** this regard, and one we have expressed on other occasions, is that the Railway Labor Act contemplates every sincere effort by the parties to settle disputes over the interpretation and application of agreements before resorting to the services of this Board. Accordingly, an offer of compromise or settlement of a similar claim by either party cannot be construed as an admission of liability, an abdication of rights or violation of an agreement absent compelling evidence to the contrary. To hold otherwise would run counter to well established principles intended to encourage settlement of disputes by mutual agreement. See Second **Division** Award 5864. Moreover, interpretation given an agreement by the parties themselves through past practice will be adopted as controlling only where the contractual language is ambiguous. See Awards 561 and 3466, this Division. **Inasmuch** as we find no ambiguity in **Article** 20(d) as amended by the **Memorandum** Agreement, we need look no further than the Agreement language in disposing of the instant claim.

The uncontested record shows that Train Order No. 37 was copied and received at Mansura Junction by the Conductor of **T&P** Extra No. 351; neither a T-rain Dispatcher nor an employee covered by the Memorandum Agreement. There was no emergency situation on April 19, 1971. Mansura Junction was a location where an **employee** under the Memorandum Agreement was not employed. **Claimant** C. E. Dowden is a Telegrapher **designated** by the District Chairman. Carrier refused to allow four hours pay at the minimum Telegrapher's rate applicable on the division.

In the foregoing circumstances and under the clear language of Paragraph 5 of the **Memorandum** Agreement, Carrier violated the Agreement and the claim must be sustained.

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 **Labo** Act, as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction
over the dispute involved herein; and

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1974.