

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22698
Docket Number CL-22491

William M. Edgett, Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and
(**Steamship** Clerks, Freight **Handlers**,
(Express and Station **Employees**
(
(**Soo** Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(**GL-8602**) that:

CLAIM NO. 1

Claim of N. E. Meacham, Traveling Agent No. 10, Marshfield, Wisconsin, for one call-2 hours pro rata **on** January 27, 1977, for violation of Telegraphers' Rule 20, when Train Dispatcher issued an instruction by radio direct to the Engineer of a train in CTC territory, regarding a slow track, at 1238 PM. The message read as follows: "Do not exceed 10 **MPH** over **Wisc.** River Bridge and look out for men and equipment on Bridge."

CLAIM NO. 2

Claim of R. **F.** Goldamer, Traveling Agent No. 9, **Marshfield**, Wisconsin, for one call-2 hours pro rata on January 27, 1977, for a violation of Telegraphers' Rule 20, when Train **Dispatcher** issued an instruction by radio **direct to the Engineer** of Train No. **18** at 1103 AM. The message **read** as follows: "**Do** not exceed 10 MPH over the West Dual Control Switch at Marshfield account broken rail."

CLAIM NO. 3

Claim of R. **F. Goldamer**, Traveling Agent No. 9, Marshfield, Wisconsin for one call-2 hours pro rata on January 28, 1977, for violation of Telegraphers' Rule 20, when Train Dispatcher issued an instruction by radio direct to the Engineer of a train regarding a slow track. The message to Train No. 18 at 1028 AM read as follows: "Do not exceed 30 **MPH** at any time on both 6th and 3rd Sub Divisions."

CLAIM NO. 4

Claim of H. Harris, Traveling Agent No. 2, Appleton, Wisconsin, for one call-2 hours pro rata on February 3, 1977, for a violation of Telegraphers' Rule 20, when Train Dispatcher issued **an** instruction by radio direct to the Engineer of Extra 722 regarding slow track **account** broken rail.

The message delivered at 0910 AM read **as** follows: "Do not exceed 10 MPH between **MP** 195 and **MP** 196 account broken rail."

OPINION OF BOARD: The first issue to be decided in this dispute is whether or not the messages quoted in Claims 2, 3 and 4 meet the criteria of train orders as that term is contemplated in the parties' agreement and defined by Awards of this Board. It is unnecessary to resolve this issue with respect to Claim No. 1 as after this case was docketed with this Board the Carrier decided that the claim did **in** fact have merit and allowed its payment.

The Carrier's purpose in allowing Claim No. 1 should be noted. In reasoning the allowance of Claim No. 1 the Carrier stated.

"It **was** determined by Carrier that this **was** not an **emergency** situation, nor did the message constitute instructions regarding any **emergency** track situations."

The Carrier argues **that** Claims Nos. 2, 3 and 4 should not be allowed because

- a) "It is the position of the Carrier **that** emergency conditions existed with regard to Claims Nos. 2, 3, and 4."
- b) "It is also the position of the Carrier that the emergency instructions do not constitute **train** orders."

Rule 20 of the parties' agreement provides:

"(a) No employee other than covered by this schedule 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.

"(b) When employees not covered by this agreement are required to handle train orders at a location where employees covered by this agreement are not on duty any portion of the day or night, the senior telegrapher working at the nearest location to the point **on** the seniority district where the train order is **handled** shall be notified and allowed a cell at the **minimum** telegraphers' rate applicable **on** the seniority district for each occurrence.

"(c) Except where other telegraphers are employed, Traveling Agents shall be considered employed and available to perform service required at all stations within his assigned territory. In the event the Traveling Agent is on duty at the time the violation occurs, he shall be paid two (2) hours at the pro rata rate of his assignment."

Rule 20 as we read it provides for payment **under** certain circumstances to certain telegraph service employes when **employes** not covered by the agreement handle train **orders** even when such handling is in an emergency. Thus to deny payment solely because an alleged emergency existed would not be in accord with the term of the agreement.

The remaining question to be answered is do "emergency instructions" to a train constitute a train order.

Instructions to Train Crews can **and** do take various form and substance, i.e., time tables, bulletins, hand signals, traffic control devices (both **manual** and mechanical), fuses, and etc. The form and substance of such instructions generally determine whet is a **train order** and what is not. In the instant case, with respect to Claim Nos. 2, 3 and 4, we hold that the form and substance of the messages, which is quite identical to **that** involved in **Claim** No. 1, constituted a train order.

We will sustain Claim Nos. 2, 3 and 4. Claim No. 1 is moot.

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 Employes involved in this dispute are respectively Carrier and **Employes** 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 violated.

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Claims Nos. 2, 3 and 4 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pambore
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.