

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23017  
Docket Number CL-22803

Richard R. Rasher, 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-8786)  
that:

(1) Carrier violated **the** effective **Agreement**, specifically Rule 1, and Memorandum of Agreement of November 28, 1945, when train crew **employees** not of this Craft and Class were required **and/or** permitted to **OS** their trains directly to the dispatcher via radio-telephone.

(2) Carrier shall **compensate** Operator A. A. Strebe, **Waukesha**, Wisconsin, for **one** (1) call, two (2) hours, **at** the rate of time and one-half, at the rate of his position for each of the **claim** dates: January 5, 11, **12** and **14**, 1977, in addition to any compensation previously received for these dates."

OPINION OF BOARD: The Organization has claimed that the Carrier violated **the** parties' Scope Rule and Joint Memorandum of Agreement dated November 28, 1945, by permitting its conductors to report their trains' departures and giving information regarding their trains' consists. The Memorandum of Agreement reads in pertinent part as follows:

(3) When no emergency **exists**, as above defined, an inquiry by train or **enginemen** as to the time **or loca-  
tion** of another train or in connection with their work, will not be considered a violation of this agreement when it does not involve the transmission of train orders, messages of record, reports or **OS** of trains.

The issue before this **Board** is whether **communication made** by conductors on January 5, 11, 12 and **14**, 1977 **were** messages of record, i.e. "OS" reports, and therefore prohibited by the Scope **Rule** and **Memorandum** of Agreement, which provide that telegraphers rather than conductors have the contractual right and responsibility to make the reports.

The Carrier operates daily turn **around** service between Shops Yard, **in** Fond du Lac, Wisconsin, **and** North Milwaukee, Wisconsin, a distance of approximately sixty miles. From Rugby Junction to North Milwaukee, a distance of about 20 miles, the Soo **Line** train operates on track of the Chicago, Milwaukee, St. Paul and Pacific Railroad (**CMSTP&P**) by a trackage rights agreement. The Soo **Line** maintains a yard and clerical force at North Milwaukee and the Soo **Line** train dispatcher maintains a station record of Soo Line **trains** arriving and **departing** to and from the station.

The instant dispute arose because certain Soo Line conductors departing **from** North Milwaukee **radioed** the **Carrier's** train dispatcher with **information** including departure **time** and train consist. The **Organization** contends that the **information** provided constituted "OS" reports, work covered by the Scope Rule and limited to covered **employees**, in this **case** to telegraphers, except **in emergencies** under the **Memorandum of Agreement**.

The Carrier responded with two arguments: (1) **The** alleged violations occurred while the trains were **on** a foreign track (the **CMSTP&P**) and were therefore **not** covered by the Soo Line **Agreement**; and (2) **The** information **communicated** by the conductors was of an **informational** rather than a formal nature (i.e., the **information**; which was merely **pencilled** figures on a train sheet, was not a **message** of record or **formal** "OS" report).

**Both arguments** beg the issue. The "foreign line" argument ignores several facts. The Soo Line dispatcher is required to keep a record of train movements over the Milwaukee Line. The transmissions, which are the subject of this dispute, involved employees of the Soo Line and the **movement** of Soo Line trains. Finally, it was Soo Line work over which the Carrier had control, and which it contracted with its employees to perform.

Regarding the Carrier's **second** argument, that these reports were merely informational and not "OS" reports, this Board concludes that the manner in which the reports were maintained, i.e., pencilled instead of inked, **is** not dispositive.

An "OS" report is a train report of the **time** of arrival, departure or passing of a train. The purpose is to **know** the location of a given train at all times. The manner of maintaining is of no great significance in comparison to the contents of the reports. This Board accordingly finds that **the communication made** by conductors from North Milwaukee on January 5, 11, **12**, and 14, 1977 were, in fact, "OS" reports. The claims for these four days **are** sustained.

With respect to other claims of similar nature being held in abeyance, the parties **are** directed to **make** a joint check of the records: When a train crew member made an "OS" report, meeting the **minimum** definition, i.e., reporting **time** out or when train passed a particular milepost, the claim should be paid.

**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 **violated**.

A W A R D

**Claim** sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By **Order** of Third Division

ATTEST: *A. W. Paulsen*  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of **October 1980**.

CARRIER MEMBERS' DISSENT  
TO  
AWARD 23017, DOCKET NO. CL-22803  
(RefereeKaehcr)

The Majority has failed to understand and grasp the **historical** meaning and Interpretation of the term "OS".

The **gravamen** of this dispute involves **messages** which the **Organization** allege were "**OSing**". Without even considering the several **factors** which have been used to determine if a message is **an** "OS", the **Majority** cavalierly concluded that **certain** transmissions by **Carrier's** conductors were in fact "**OSing**". Generally, three criteria has been employed in determining if a message is an "OS"; the message contains the time **of** a train arrival passing, or departure; the message directly affects or controls the movement of trains; and the nature of the message is such that a permanent record is or should be made.

Clearly, the Organization did not provide evidence concerning the use or recordation of the message. **The** Majority chose to ignore the Carrier's well reasoned, articulated argument that the message was purely Informational and that it did not rise to the level of an "OS". The train dispatchers' statements stand unrefuted in the record suggesting the **glaring** oversight by the Majority **in** its failure to Identify the message as **informational** only. If the **Majority** had accurately recognized the nature **of** the **transmissions** it would have been impossible for them to conclude that the **work** was covered by the Scope Rule and limited to telegraphers.

Further, the Majority concluded the following in rendering this award:

**"An** "OS" report is a train report **of** the time of arrival, departure or passing of a train. **The** purpose **is** to know the location of a given train at **all** times. The manner of maintaining is of no great significance in comparison to the contents **of** the

reports;. This Board accordingly finds that the communication made by conductors from North Milwaukee on January 5, 11, 12, and 14, 1977 were, in fact, "OS" reports. The claims for these four days are sustained."

Once again, the record in this case was ignored as the Majority accepted the **Orgainzation's allegation** that the **transmissions** were actual departure times. The Carrier perspicaciously drew attention to the fact that the messages did not involve actual departure time, rather, only **estimated departure times** were transmitted. This **is** significant **because it goes to** the very question of whether or not an "OS" **was** given. Obviously, an estimated departure **time is** not an **actual** departure time, neither would it control the **movement** of trains nor demand permanent **recordation**. **Clearly, then, the transmissions** in question were not "OSing" as understood by many previous **Board Awards**. See Awards: 5181 and 10525, among **others**.

The Majority also failed to recognize a long **standing** procedural principle of this Board. That is, the **Organization** failed to meet **its burden** of proof **with regard** to their allegation concerning whether the messages **were actually** departure times. The **Organization** never produced substantial probative evidence on the issue. Further, the Majority never addressed the issue in Its **award appearing** to accept the Organization's allegation as an agreed upon fact and making their decision on that basis.

**The** Majority **in** their award went beyond their authority when they addressed the **issue** of claims of a similar nature not **presently** before the Board. **The original** claim contained **four specific** dates on **which** alleged violations occurred and this should have been the extent of the **Majority's** consideration.' **However,** it appears the Majority chose to exceed their statutory **boundries** and decide the fate of **claims** not properly before the **Board**.

This Award reflects a misunderstanding and improper interpretation of the term "OS". Therefore we register our dissent.

J. R. O'Connell  
J. R. O'CONNELL  
J. E. Mason  
J. E. MASON  
P. E. LaCrosse  
P. E. LACOSSE  
P. V. Varga  
P. V. VARGA  
W. F. Euker  
W. F. EUKER

LABOR MEMBER'S ANSWER TO  
CARRIER **MEMBERS'** DISSENT TO  
AWARD 23017, DOCKET NO. CL-22803  
(Referee Kasher)

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After carefully reading Carrier Members' Dissent to Award 23017 and carefully re-reading the Award itself and again carefully studying and re-reading the record in Docket CL-22803, I seriously doubt that the Dissenters even briefly scanned the record. The Dissenters have demonstrated that they do not understand the record, and if they had taken the time to read it, they would not have woven a web of foolish or stupid remarks. For example, the penultimate paragraph of the dissent states:

"The Majority in their award went beyond their' authority when they addressed the issue of claims of a similar nature not presently before the Board. The original claim contained four specific dates on which alleged violations occurred and this should have been the extent of the Majority's consideration. However, it appears the Majority chose to exceed their statutory **boundries** and decide the fate of claims not properly before this Board."

If the Dissenters had read as far as page two of the Carrier's Ex Parte Submission they would have known that it was the Carrier itself that placed the fate of similar claims before the Board. The last paragraph of Carrier's Statement of Facts stated:

"All pertinent correspondence in connection with this dispute is attached in exhibit form and made a part of this record. Correspondence labeled as Exhibits 'A' through **"P"** is related to the initial claim before the Board. Subsequent dates of claim were submitted to the Carrier and are being held in abeyance pending the Board's decision. Pertinent correspondence relating to these other dates of claim as well as conference confirmations are included in exhibit form. The Carrier did not include all of the numerous letters granting extensions of the time limits in which to process this dispute to the Board, but the dispute was timely handled by both parties.

"The **Subsequent** dates of claim attached to this dispute are:

### 1977

February **1**, 11, 15  
March 16  
April 18, 19, **20, 21, 22**, 25, and 26  
May 4, 12, 13, 16, 19, 20, 24, and 27  
**June 2, 7, 9, 10, 11, 14, 15, 17, 20, 21, 22, 23, 24, 27, 28, 29**  
July **1, 5, 7, 13**, 14, 15, 18, 19, 20, **21**, 22  
25, 26, 27, and 28  
August **1**, 2, 3, 5, 10, **11**, and 12  
September 19, 21, 22, **23**, 26, 27, and 30  
October 3, 4, 5, 11, 12,, **13, 14**, 19, 21, 25, 26, and 28  
November 1, 2, 4, 7, 8, 9, 10, 14, and **15**  
December 16, 21, 23, 29

### 1978

January 4, 5, 6, **11**, 12, 13; 16, **17, 18**, 23, 24  
and 25  
February 1, 2, 3, 15, 20, 24, and 27  
March 1, 6, 7, 8, **10**, 13, 14, 15, 16, 20, 21, 27, 28, 29, 30, and 31  
April 3, 5, 6, 10, 17, 18, 21, 24, 25, **26**, and 27  
**May 1**, 8, 17, 19, and 30  
June 5 and 8"

It is **ludicrous** for the Dissenters to now argue that the Majority exceeded its authority when the fate of similar claims was disposed of as it was the Carrier itself that joined the issue and placed such claims before the Board for consideration.

The above is not the only instance where the Dissenters have demonstrated their **complete** lack of understanding of the record. Another instance where they clearly indicated that they do not have the faintest idea on what was involved is their statement:

"The **gravamen** of this dispute involves messages which the Organization allege were '**OSing**'."



When the dispute in Docket CL-22803 was handled on the **property** and before this Board the sole issue was whether messages sent by train crews were messages of record. To determine what the issue **was, all** the Dissenters had to do was read the first statement of the Position of the Carrier. This had ought not to be too difficult and could happen even before the briefest attention span lapsed as it starts on page 3 of Carrier's brief. Here the Carrier's Director **of Labor** Relations starts his argument on his case by informing the Board very succinctly what the dispute was all about:

"The sole issue is whether or not the information conveyed to the dispatcher by the conductor of Train No. 15 constitutes a 'message of record.'"

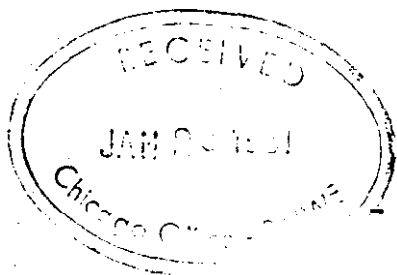
It is ironic that the Dissenters would have ~~the~~ unmitigated gall to accuse the Majority of straying from the record when it is demonstrated that they themselves failed to even read the record, for had they read the record, they could not make some of the statements they made unless their purpose is to deceive, confuse or lie.

Carrier Member Dissenters also attempt to massage and mold the argument that the message conveyed to the dispatcher by the conductor of Train No. 15 was "purely informational" and thus somehow different from other messages of record. It had ought to be **obvious to** anyone that all messages between conductors and dispatchers are informational. **What other** purpose would a message have unless the dispatcher and the conductor were telling each other jokes, discussing the weather, passing on idle gossip, or prattling like childish Dissenters. Obviously the messages involved in **this** dispute were "purely informational." They were

informational and they contributed to the operation of the railroad. The purpose of the message was to inform the dispatcher the location of **the** train and this information was used by the dispatcher to direct train operations throughout the rest of **his** territory. It was informational and necessary and it was recorded on the train sheet for use in directing train movements.

Carrier Member Dissenters attempt to make a "federal case" on the permanent recording issue. The conductor's **message was** originally pencilled onto the train sheet. After the **train** had arrived at **its** destination and the conductor had signed out on the train register, then the details of the message were permanently inked on the train sheet. This devious method of recording, it is argued, somehow or other licenses a violation of the agreement. Carrier's arguments on the great pencil vs. ink controversy were correctly disposed of by the Majority. As far as the Organization is concerned it would have made no difference if the dispatcher used Crayolas to record the message.. Item (3) of the Joint Memorandum of Agreement (quoted in the Award) and the Scope Rule do not, except in emergencies, permit direct **communication** between conductors **and dispatchers** when such communications involve **train** orders, messages of record, reports or OS of trains.

Carrier Members' Dissent must be ignored, for all it demonstrates is that the Dissenters did not understand or perhaps **did** not even read the case.



  
J. C. Fletcher, Labor Member

Labor Member's Answer  
to Carrier Members' Dissent  
to Award 23017