

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23922
Docket Number CL-23796

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: { (Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, **Express and Station Employees**
(Missouri-Kansas-Texas **Railroad Company**)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(x-9300) that:

(1) The Missouri-Kansas-Texas Railroad Company violated the current Rules Agreement between the parties, DP-451, including but not limited to Rule 1, Section 7(c) when at 11:29 p.m., July 20, 1979, it allowed, required and/or permitted Engineer Mounce on Train Extra BN 5309 North to copy and handle Train Order No. 117 via radio while his train was standing still at LCRA siding, and then failed and refused to compensate agent-telegrapher Fred Saenz, Jr., a two (2) hour call in accordance with the provisions of current Rule 1.

(2) Carrier shall compensate Mr. Fred Saenz, Jr., Agent-Telegrapher, LaGrange, Texas, a two (2) hour call at the time and one-half rate for July 20, 1979, for train order No. 117 copied at 11:29 p.m.

OPINION OF BOARD: The Organization claims that Carrier violated the Section 7(c) of Rule 1 when it permitted and or required a non-covered employee to copy train order No. 117 at 11:29 p.m. on July 20, 1979 and then refused to compensate Claimant, Agent-Telegrapher Fred Saenz a two (2) hour call. The Employee asserts that Carrier was obligated to pay Claimant a call under the terms of Section 7 (c).

Carrier does not dispute that an employee excepted from the Rules of the Agreement copied the order. However, Carrier argues that no compensation is due Claimant because he had already been paid a call pursuant to Section 7(c) as a result of a train order being handled at 11:04 p.m. At that time, a non-covered employee copied train order No. 115. In Carrier's view, once a call was paid, Carrier need not pay any other penalty for any other violations occurring within the two hour period of the call. That is, Carrier asserts that the employee called to handle Order No. 115 could have been able to handle order 117 also.

We disagree with Carrier's reasoning. Each handling, by a non-covered employee, is a separate and distinct breach of the terms of Section 7 (c). A single payment is insufficient for each breach of the Agreement. See Public Law Board No. 352, Award No. 79. After all, if Carrier's position were sustained the rule could be repeatedly breached with immunity as long as the violation occurs within a two hour period. Such an interpretation violates the language of Rule 7 (c). We are persuaded that this was not within the parties' contemplation when they agreed to Section 7 (c). See Award 21033. We will sustain the claim as presented.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

BY Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this **30th** day of June **1982**.

