

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25320
Docket Number CL-24915

I. M. Lieberman, Referee

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

PARTIES TO DISPUTE: (

(Missouri Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9679) that:

1. Carrier violated the Agreement between the parties in particular Rule **48(d)** when, on April 2, 1981, it required **an** employe not covered by the Agreement (Train Engineer) to receive and handle a radio communication which served the purpose of a train order at a location where no employe covered by the Agreement is employed; and then, failed and refused to compensate Mr. P. L. McCoy as required by the rule.

2. Carrier shall now be required to compensate Mr. P. L. McCoy three (3) hours' pay, as required by Rule **48(d)** of the Agreement.

OPINION OF BOARD: The dispute herein **was** triggered in part by the addition of **a** Special Instruction in **Carrier Timetable** No. 15 effective August 3, 1980, **pertaining** to the use of radio:

"When **a** crew is unable to identify a train which was to meet or pass them, they may accept verbal information from the train dispatcher that the train has arrived or **passed.**"

On April 2, 1981, **the** Train Dispatcher on the Subdivision issued Train Order No. 261 to Claimant **working** at Carthage, Mo. who handled and delivered the Order to the crew of Extra 3045 South at Carthage. That Order provided:

'April 2 1981

Train Order No. 261

To c & E Eng 3045

At **Carthage**

Eng 3045. run Extra Carthage to

South Switch Aurora

After Extra 2157 North arrives

Aurora **Eng 3045 run** Extra

South Switch Aurora to Cotter and

wait at **Crane** until 12 01 a m

Cricket 1 30 a m

RGC

Made com Time 9 30 pm McCoy Opr . "

Shortly after Extra 3045 South left Carthage the Dispatcher was advised that Extra 2157 North had arrived at Aurora (**some** 38.5 miles from Carthage). He then instructed Claimant at Carthage to contact Extra 3045 South and tell them that Extra 2157 North had arrived at Aurora. Claimant contacted Extra 3045 by radio and advised the crew that: "Extra 2157 North has arrived Aurora". It **was** this act which triggered the Claim herein.

Organization argues in substance that the radio communication served the purpose of a Train Order and was in fact a substitute for a Form "**V**" Train Order. It is maintained that the communication had the effect of nullifying the "meet" of the two trains and thus the call provided for in Rule 48/d) is applicable. Organization argues further that Operating Rule changes or Timetable changes do not govern or change the provisions of the Agreement which remain paramount.

Carrier insists that the radio communication was merely an exchange of information and was not a Train Order or its equivalent. Carrier states that conversations such as that herein are typical and frequent and characterize the help Railroad **employees** give each other to expedite work. In this instance Carrier maintains that the **radio** message was not needed for the purpose of giving the crew of ~~the~~ southbound train authority to proceed to Aurora (or **beyond**), **but** merely an attempt to expedite the **movement** of that train to Aurora to minimize the time the northbound train had to wait at Aurora.

An examination of the record of this dispute reveals a sound exposition of theory by the Organization. However the facts upon which Organization's position is based appear to be erroneous. From the record it appears that both trains involved had their running orders covering their movement to their destinations. Contrary to Petitioner's assertion nothing in the radio communication superseded or even partially annulled Train Order 261. Nothing would have changed, as the record indicates, had the controversial radio communication been omitted (except possible waste of waiting time).

This dispute is one of a long series **involving** the question of "messages of record*" and whether a particular communication is in fact a Train Order warranting compensation under Rules such as Rule 48/a) herein. The principal criterion used **over** the years has been whether the particular message affected train movements (**see** Awards 14481, 17334 and 17821 **among** a host of others). Obviously each case must be judged on its particular facts **and** merits in this regard. In the instant case, it is the Board's view that the **communication** was merely an exchange of information and Petitioner has furnished no evidence that it made any difference in the basic Train Order and the **movements** involved. For that reason the Claim must be denied.

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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois this 15th day of March 1985