

The Third Division consisted of the regular members and in addition Referee Eckehard Muessig when award was rendered

PARTIES TO DISPUTE: (Transportation Communication International Union
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(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10326) that:

CLAIM NO. 1:

(a) Carrier violated the intent and provisions of the current Clerks' Agreement at Sweetwater, Texas, on July 11 and 12, 1984, when it required and/or permitted an employe not covered by the Agreement to handle a Train Order at an office of communication where an employe covered by the Agreement is assigned and available when no emergency existed, and

(b) Carrier shall now compensate S. R. Hastings, who is the qualified employe who should have handled the Train Order, three (3) pro rata hours' pay at the rate of his position, in addition to any other compensation Claimant may have received for July 11 and 12, 1984, as a result of such violation.

CLAIM NO. 2:

(a) Carrier violated the intent and provisions of the current Clerks' Agreement at Cleburne, Texas, on June 7, 12, 14, 20, and 21, 1984, when it required and/or permitted an employe not covered by the Agreement to handle a Train Order at an office of communication where an employe covered by the Agreement is assigned and available when no emergency existed, and

(b) Carrier shall now compensate L. H. Bowden, who is the qualified employe who should have handled the Train Order, three (3) pro rata hours' pay at the rate of his position, in addition to any other compensation Claimant may have received for June 7, 12, 14, 20, and 21, 1984, as a result of such violation.

CLAIM NO. 3:

(a) Carrier violated the intent and provisions of the current Clerks' Agreement at Sweetwater, Texas, on August 8, 9, and 16, 1984, when it required and/or permitted an employe not covered by the Agreement to handle a Train Order at an office of communication where an employe covered by the Agreement is assigned and available when no emergency existed, and

(b) Carrier shall now compensate S. R. Hastings, who is the qualified employe who should have handled the Train Order, three (3) pro rata hours' pay at the rate of his position, in addition to any other compensation Claimant may have received for August 8, 9, and 16, 1984, as a result of such violation.

CLAIM NO. 4:

(a) Carrier violated the intent and provision of the current Clerks' Agreement at Artesia, New Mexico, on August 30, 31, September 1, 4, and 5, 1984, when it required and/or permitted an employee not covered by the Agreement to handle a Train Order at an office of communication where an employee covered by the Agreement is assigned and available when no emergency existed, and

(b) Carrier shall now compensate J. L. Alsup, who is the qualified employee who should have handled the Train Order three (3) pro rata hours' pay at the rate of his position, in addition to any other compensation Claimant may have received for August 30, 31, September 1, 4, and 5, 1984, as a result of such violation.

CASE NO. 5:

(a) Carrier violated the intent and provisions of the current Clerks' Agreement at Cleburne, Texas, on June 2, 4, 7, 8, 15, and 22, 1984, when it required and/or permitted an employee not covered by the Agreement to handle a Train Order at an office of communication where an employee covered by the Agreement is assigned and available when no emergency existed, and

(b) Carrier shall now compensate J. A. Dwyer, who is the qualified employee who should have handled the Train Order, three (3) pro rata hours' pay at the rate of his position, in addition to any other compensation Claimant may have received for June 2, 4, 7, 8, 15, and 22, 1984, as a result of such violation.

CASE NO. 6:

(a) Carrier violated the intent and provisions of the current Clerks' Agreement at Dumas, Texas, on March 2, 1985, when it required and/or permitted an employee not covered by the Agreement to handle a Train Order at an office of communication where an employee covered by the Agreement is assigned and available when no emergency existed, and

(b) Carrier shall now compensate I. G. Barrett, who is the qualified employee who should have handled the Train Order, three (3) pro rata hours' at the rate of his position, in addition to any other compensation Claimant may have received for March 2, 1985, as a result of such violation."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This particular dispute involves six separate claims which were triggered when, on March 21, 1983, the Carrier discontinued the use of Train Orders on portions of its Albuquerque (New Mexico) Division and began using a different method of controlling train movements which it designated as Track Warrants Control (TWC). The Carrier pursuant to the TWC System, stated briefly, allowed Train Dispatchers to issue Track Warrants (TW) by radio transmission directly to train crews.

The Organization contends that by requiring or permitting Dispatchers or others not covered by the Clerks' Agreement to handle TWs, the Carrier stands in violation of "Rule 3 - Handling Train Orders," because employees outside of the coverage of the Clerks' Agreement perform work of Train Order Operators.

The record before the Board in this case is voluminous and complex. However, an analysis of the key issues shows that gray areas do exist that may cause reasonable people to disagree, as in this instance. Nonetheless, while we do not minimize the many and varied issues and their ramifications in this claim, the controlling question before us may be summarized as follows: Is the procedure involved in the issuance of Track Warrants the same procedure which was used or followed to issue a Train Order?


The Carrier argues that this question was decided by Award No. 1 of Public Law Board 3943 when it denied twelve (12) claims that addressed the same issue as now before this Board. The Organization, on the other hand, contends that such Award "... failed to recognize or to rule on arguments presented by the Organization," largely because of its improper interpretation of the strictures of Circular No. 1 of the Board.

We have carefully considered the arguments advanced by both parties and the numerous arbitral Awards cited to support their respective positions. We find that the basic claims, the issue, and the arguments presented here are, with respect to their substance, the same as those considered by Public Law Board 3943 before it issued its Award 1. Accordingly, in the absence of clear error, under the doctrine of res judicata, this Board is prohibited from again adjudicating the same issues of fact and contract interpretation which were decided in Award 1 of Public Law Board 3943.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Dever, Executive Secretary

Dated at Chicago, Illinois, this 19th day of July 1990.