Award No. 1224
Docket No. TE-1234

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHICAGO, ROCK ISLAND & PACIFIC
THE CHICAGO, ROCK ISLAND & GULF RYS.

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railway that:

1. The Carrier violated the provisions of the Mediation Agreement, A-560, of February 16, 1939, as agreed it should be applied, when the Carrier required or permitted the train dispatcher at El Reno, Okla., to transmit to, and required or permitted the conductor of Extra West 3025 to take a train order at King, Okla., by telephone at 7:38 A. M. on May 1, 1939:

2. And, that, the Carrier by this violative act having established a telephone office at King, Okla., under telegraphers' agreement, did also violate the terms of the telegraphers' agreement by requiring or permitting an employe not under said agreement to perform work covered by the agreement, thereby depriving the senior idle extra employe of a day's pay he would have earned had the violation not taken place and for whom such compensation is claimed."

EMPLOYES' STATEMENT OF FACTS: "It is the contention of the General Committee of The Order of Railroad Telegraphers that, there is in existence an agreement between the Chicago, Rock Island and Pacific-Chicago, Rock Island and Gulf Railways and The Order of Railroad Telegraphers, dated January 1, 1928, covering wages and working conditions of employes occupying positions as classified in the Scope rule thereof; that there also is in existence another agreement between the Chicago, Rock Island and Pacific-Chicago, Rock Island and Gulf Railways, on the one hand, the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railroad Conductors, the Brotherhood of Railroad Trainmen, the American Train Dispatchers' Association and The Order of Railroad Telegraphers, on the other hand, dated February 16, 1939, and effective April 1, 1939, known and to be identified as Mediation Agreement A-560, covering the taking of train orders and blocking of trains by train and engine service employes, or the transmitting of train orders directly to and the blocking of trains directly with train and engine service employes by train dispatchers, which Mediation Agreement is accompanied by a memorandum of understanding between the parties on the effect Agreement A-560 would have on certain timetable rules in effect at the time the Agreement A-560 was consummated, copies of which have been furnished to the Board.

raphers' agreement and the telegraphers definitely stated that they desired to rely wholly upon their Article 1 (b) as above quoted. That is the only rule which provides for pay for work not performed and there is no provision for pay unless there is a telegrapher employed at the point where a train order is taken by an engineman or trainman, and no penalty is provided in that rule for the taking of a train order at a blind siding. Since the proposal submitted by Mediator Thompson added nothing to the rights conferred by Article 1 (b), the proposal was dropped.

"If the employes intended to provide for payment where a train order was secured at a blind siding by a conductor, engineman or brakeman, it would have been easy to have inserted a clause to that effect in the Mediation Agreement effective April 1, 1939.

"Attention is here called to Award 109 of the Third Division of the Adjustment Board where Referee Samuell stated:

> 'Had the framers of the contract intended that the handling of train orders or blocking of trains or work of any character connected with the regularly assigned work of the employe at stations where an employe as per this rule is employed, etc., should be the agreement between the parties, they could have easily expressed it.'

This same principle is enunciated in the Opinion of the Board in Award 901. The same principle would certainly apply in the instant case where no telegrapher is employed and if it was intended to redraft the rules to provide for further penalties we would have done so in the Mediation Agreement of April 1, 1939.

"In conclusion there is no penalty provided in the Mediation Agreement effective April 1, 1939, nor in the telegraphers' agreement of January 1, 1928, and none should be applied as to do so would, in fact, be writing a new rule.

"There is no provision in the telegraphers' agreement to the effect that a new office is opened when a conductor spends a few minutes' time taking a train order and it is absurd to say that the taking of a train order by a conductor at a blind siding created a new telegraph office and established a position of a telegrapher. Such a contention is actually denied in Article 1 (b) of the telegraphers' agreement of January 1, 1928, herein quoted, as that article definitely provides for the payment of a call at a station where a telegrapher is employed but not located, and it, therefore, does not create a new office or a new position, but gives a payment of a call to a telegrapher who is employed at that point. This principle is applied even though a train order is taken by a conductor over the telephone at the signal at the end of the siding at that station, which is usually several hundred feet from the station itself. No contention has ever been raised that the handling of a train order at the signal rather than at the station creates a new telegraph office at the signal or switch protecting the sidings at that station. Payment of a call in such cases has always been made to the telegrapher employed at the station.

"In the instant case there was no telegraph or telephone office in existence and no operator employed or available at King, Oklahoma, therefore, there was no violation of the agreement and the claim should be denied."

OPINION OF BOARD: The principles involved in this claim in respect to the application of Mediation Agreement A-560 and the governing Agreement of Rules and Rates of Pay are identical with the principles in Docket No. TE-1230, Award No. 1220. For the same reason assigned in that case, the Board holds that the Agreement was violated at the place and time stated in this claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to the dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

There was a violation of the existing agreement and the senior, extra, idle employe should be paid a day's pay.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 31st day of October, 1940.