Award No. 2148
Docket No. TE-1968

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Chicago, Burlington & Quincy Railroad, that:

(1) The Carrier violated the provisions of the Telegraphers' Agreement as amended by Mediation Agreement A-546 of January 1, 1939, by requiring and permitting a train or engine service employe of freight train Extra 5337 West, an employe not under the Telegraphers Agreement, to copy train order No. 129 at Island Park, Iowa, a point where there is no telegrapher employed, on March 14, 1941, which violative act in effect opened a temporary train order office at Island Park and denied the performance of this work to an employe carried on the Telegraphers' seniority list; and that

(2) The senior, extra, employe on that district, idle on March 14, 1941, be paid a day's pay of eight hours at seventy cents (70¢) an hour, which, as the employe entitled to perform such service, he would have earned had he been used therefor.

POSITION OF EMPLOYES ON JURISDICTION: The Carrier first raises the question of the right of this Third Division of the Adjustment Board to assume jurisdiction and decide a dispute involving a violation of the Mediation Agreement A-546 on the grounds that under the provisions of Section 5, Second, of the Railway Labor Act the National Mediation Board only may interpret the meaning or application of Mediation Agreement A-546, which was entered into by the Carrier and its employes through the services of the National Mediation Board.

We disagree with the motion and argument of the Carrier to dismiss the proceedings in this case on those grounds. We argue that Mediation Agreement A-546 supplemented and amended the prevailing telegraphers' contract of agreement as of its effective date, January 1, 1939, the rules of which became a part of the telegraphers' agreement and thereafter governed the performance of work covered by the telegraphers' agreement and obligates the Carrier to observe in connection with the other rules of the telegraphers' agreement. The instant case in dispute involves a violation of the clear terms of the Mediation Agreement and requires no interpretation of its meaning or application, and, therefore, is not a matter coming within the jurisdiction of the National Mediation Board. The violative action of the Carrier with respect to Mediation Agreement A-546 is a matter incidental or corollary thereto which has arisen by virtue of the agreement and as such gives jurisdiction to this Third Division of the Adjustment Board to hear and decide the dispute in the instant case.

or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides, give its interpretation within 30 days."

is the avenue duly provided by law for use in a dispute such as this one.

RULE 21, WHICH HAS BEEN REFERRED TO BY THE PETITIONER

This rule reads as follows:

"**Employes performing duties at temporary offices,** wrecks, washouts, slides, snow blockades, or other similar emergency offices, will receive a minimum of sixty-five cents (65¢) (70¢ on date named in claim) per hour for eight (8) hours or less and overtime at overtime rates and actual living expenses while away from home. Time will be computed from time they start until they return, except for such time as they may be relieved from duty." (Emphasis supplied.)

That part of the schedule rule hereinabove quoted which reads, "Employes performing service at temporary offices . . . will receive . ." is particularly significant when viewed in the light of that part of the claimant's statement of claim which is phrased, "and that the senior, extra employe on that seniority district, **idle on March 14, 1941,** be paid a day's pay of eight hours." The inconsistency of attempting to give the benefit of the rate of pay and other conditions relating thereto to an employe **who performs service at a temporary office** to an employe who was **idle** on the date named in the claim is so obvious it justifiies no further comment.

The foregoing discussion of Rule 21 is only for the purpose of more clearly pointing out to the Third Division that the instant dispute turns entirely upon the provisions of Mediation Agreement A-546 and that this rule affords the claimant no standing before the Adjustment Board. To further bear out this contention **it must be kept in mind that there has never been a time in the operation of this railroad, when a telegrapher was employed at Island Park.** Thus premised, and to determine to what extent restrictions had been imposed with respect to other than operators handling train orders before the effective date of Mediation Agreement A-546, we must look to the schedule agreement. The only schedule provision having relevancy to this particular feature is Rule 5, which reads:

"No employe other than covered by this schedule and train dispatchers **will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located,** except in an emergency, in which case the telegrapher will be paid for the call." (Emphasis supplied.)

From this it will be seen that the only restrictions as to the handling of train orders by other than operators at points where operators were not employed, until the advent of the aforementioned Mediation Agreement, and **there has never been an operator at Island Park.** Thus is is shown by a a superabundance of incontrovertible evidence that this alleged dispute has no standing under the schedule agreement. The point at issue is resolved to one question and one question alone—which is—does Mediation Agreement A-546 contain a penalty provision? Under the provisions of Section 5, Second, of the Railway Labor Act as amended, that question, arising as it does from an agreement which was negotiated with the assistance and under the auspices of the National Mediation Board, is referable to no other tribunal for interpretation.

The defendant carrier, therefore respectfully urges that this proceeding be dismissed for lack of jurisdiction.

OPINION OF BOARD: The only question for determination is whether this Division has jurisdiction of the claim. The situation is, in all essential respects, identical with that presented in Docket No. TE-1966. What was said in disposing of the question there (Award No. **2147**) is equally applicable here.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this 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; and

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

AWARD

This Division has jurisdiction of the claim.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. JOHNSON
Secretary

Dated at Chicago, Illinois, this 9th day of April 1943.