

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,

(1) That 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 No. 68, an employe not under the Telegraphers' Agreement, to copy train order No. 113 at Island Park, Iowa, a point where no telegrapher is employed, on December 18, 1940, 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

(2) That the senior, extra, employe on that district, idle on December 18, 1940, he 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.

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.