

Award No. 2312
Docket No. TE-1966

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Herbert B. Rudolph, 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 or permitting the conductor of freight train extra 5122 south, an employee not under the Telegraphers' Agreement, to copy train order No. 217, at Forman, Illinois, a point where there is no telegrapher employed, on November 6, 1940, which violative act in effect opened a temporary train order office at Forman and denied the performance of this work to an employee carried on the Telegraphers' seniority list; and (2) that the senior, extra employee on that seniority district, idle on November 6, 1940, be paid a day's pay of eight hours at seventy cents (70¢) an hour, which, as the employee entitled to perform such service, he would have earned had he been used therefor.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date September 1, 1927, as to rules of working conditions as amended by Mediation Agreement A-546 of January 1, 1939, and August 1, 1937, as to rates of pay is in effect between the parties to this dispute.

On November 6, 1940, upon freight train extra 5122 arriving at Forman, Illinois, a point where there is no telegrapher employed, the conductor called the train dispatcher from this point, by means of the dispatcher's telephone, and inquired if his train could be advanced against an overdue time freight, and the dispatcher promptly issued train order No. 217 addressed to C. & E. extra 5122 south at Forman, which the conductor copied, reading as follows:

"No. 15 wait at Choat until 10:45 A. M., for Extra 5122 South.
(s) W. R. E.

Made Complete at 10:08 A. M. Condr. Waring."

On receipt and delivery of this train order by the conductor, extra 5122 south proceeded from Forman.

POSITION OF EMPLOYEES: Mediation Agreement A-546 of January 1, 1939, in amendment of the current Telegraphers' Agreement of September 1, 1927, provides as follows:

"MEDIATION AGREEMENT

"It is mutually agreed that the dispute, National Mediation Board Case A-546, jointly submitted to mediation by representatives of The Chicago, Burlington & Quincy Railroad Company, Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, Brotherhood of Railroad Trainmen, The Order of Railroad Telegraphers and The American Train Dispatchers' Association (the last-named six organizations representing employees of the carrier) is hereby disposed of as follows:

(4) the Management's letter of December 15, 1938 to the Company officers concerned (Exhibit No. 3), to see that copy of Mediation Agreement A-546 be placed in the hands of each engineer, fireman, conductor, brakeman, telegrapher and dispatcher before its effective date with request that each paste his copy in his schedule so it will not be lost or destroyed;

(5) the settlements in letters of November 7, 1934, January 14, 1935, June 4, 1934 and February 23, 1935 (Exhibits Nos. 4, 5, 6 and 7), evidencing accepted application of the schedule agreement in cases wherein conductors copy train orders;

(6) the fact that the parties to Mediation Agreement A-546 relied upon cooperation and good faith to effect the essential force and substance to the agreement;

(7) the purpose of the Mediation Agreement was accomplished in that the "practice" complained of was eliminated by it;

(8) the fact that rule 21 provides for compensation to telegraphers only while traveling to and from and while performing duties at temporary offices, opened because of emergencies, not to "idle" telegraphers; and

(9) the fact that evidence referred to herein and made a part of this case, was not present in awards cited by the employees.

The evidence indicates beyond question of doubt that the agreements cited do not call for any payment to be made under the circumstances. Therefore, it must be decided that the claim for a day's pay in behalf of the senior extra, idle telegrapher is denied.

OPINION OF BOARD: The issue of the jurisdiction of this Division presented by this Docket has been decided adversely to Carrier's contentions by Award 2147. The dispute is now before this Division on its merits.

The claim is based upon an alleged violation of a provision contained in Mediation Agreement A-546, executed on December 8, 1939, by the parties hereto. This provision is as follows:

"(2) At points where there is no telegrapher employed, train and engine service employes will not be required nor permitted to block trains; and, other than as provided for in Rule 54 of Conductors' and Trainmen's schedules, will not be required or permitted to copy train orders except in emergency."

The facts disclose that on November 6, 1940, freight train extra 5122 arrived at Forman, Illinois, a point where there is no telegrapher employed. At this point the conductor on the extra called the dispatcher and received a train order, which was copied by the conductor, and under which the extra proceeded.

The Carrier admits that the facts disclose a violation of the Mediation Agreement, but contends, first, that the Carrier should not be held responsible for the acts of the conductor and dispatcher, which acts were neither authorized nor sanctioned by Carrier's Management; and, second, that the Mediation Agreement neither provides nor contemplates compensatory provision in the event of violative acts.

This Division, in Award 1220, was confronted with a dispute presenting a statement of facts in all respects similar to the present facts under a similar mediation agreement, and the Carrier there made the same contentions as this Carrier. In Award 1220 this Division ruled adversely to the Carrier on both contentions. It was there held that the senior, extra, idle employe was entitled to perform the work and was entitled to a day's pay. It was further held that the Carrier was responsible for the execution of the

agreement. Nothing would be gained in any attempt to elaborate the principles announced in Award 1220; these principles are not without foundation and are consistent with awards of this and other Divisions of this Board.

For the Carrier to perform the work without violating the terms of Mediation Agreement A-546, it would have been necessary for the Carrier to, in effect, establish a temporary office at the point where the work was performed. Rule 21 provides the rate for employes performing duties at temporary offices, and we are of the opinion that the rate therein provided should govern.

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 employe involved in this dispute are respectively carrier and employe 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 Carrier violated Mediation Agreement A-546.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of September, 1943.