

Award No. 2313
Docket No. TE-1968

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, 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.

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 March 14, 1941, upon the arrival of freight train extra 5337 West at Island Park, Iowa, at about 11:05 P. M., a train or engine service employe of extra 5337 called the telegrapher at Council Bluffs, by means of the dispatcher's telephone and advised his train could proceed no further against Train No. 40. The telegrapher at Council Bluffs gave this information to the train dispatcher, who immediately issued train order No. 129 to the telegrapher at Council Bluffs reading as follows:

"To: C. & E. Extra 5337 West at Island Park via Council Bluffs.

Extra 5337 West has right over No. 40

Island Park to Council Bluffs.

(s.) C. J. C.

Made Complete at 11:12 P. M."

(4) the settlements in letters of November 7, 1934, January 14, 1935, June 4, 1934 and February 23, 1935, (Exhibits Nos. 3, 4, 5 and 6) evidencing accepted application of the schedule agreement in cases wherein conductors copy train orders;

(5) 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;

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

(7) 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

(8) 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: This dispute is governed by the Opinion filed in Docket TE-1966, Award 2312.

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.