

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 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, 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 work-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 December 18, 1940, upon the arrival of freight train No. 68 at Island Park, Iowa, at about 6:15 A. M., a train or engine service employe called the telegrapher at the adjoining Pacific Junction office, by means of the dispatcher's telephone, to learn of the location of train No. 23, due at Island Park at about 5:55 A. M. On learning that this member of the train crew of No. 68 was on the telephone, the train dispatcher issued the following train order to the telegrapher at Pacific Junction:

"Order No. 113.

TO: C. & E. No. 68 at
Island Park.

First and second 15 run 25 minutes late Red Oak to U. P.
Transfer.

Made Complete at 6:22 A. M.

(s) C. J. C.
Gleason, Operator."

Upon receipt of this train order operator Gleason at Pacific Junction relayed it by means of the telephone to the train or engine service employe at Island Park, which he copied and delivered to the train addressed. Train No. 68, upon receipt of this train order, proceeded from Island Park.

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:

ant respects from the evidence in our case. It seems unnecessary to devote a large amount of time to pointing out similarities and dissimilarities between the cases. Instead, we think the following summary of our position will make the differences quite apparent.

CONCLUSION

This case grows out of action of a number of the crew of No. 68 calling the train dispatcher on telephone from Island Park, a place where there was no telegrapher employed, nor available, and copying train order No. 113, which was transmitted to him by the train dispatcher on December 18, 1940. This action on the part of both the member of the crew and the train dispatcher was contrary to section 2 of the Mediation Agreement A-546, effective as of January 1, 1939. These employes are represented by labor organizations parties to the Mediation Agreement and they were aware of its provisions. See exhibit No. 2.

Claim is made that this action on the part of the train crew member and train dispatcher entitles the senior extra idle telegrapher to a day's pay of eight hours at seventy cents per hour. The employes cite the existing schedule agreement, Mediation Agreement A-546 and Awards 1220 and 1225 inclusive of the Third Division in support of their claim.

The carrier relies upon:

- (1) the letter notice of January 12, 1935, (Exhibit No. 1) which shows the primary object of Mediation Agreement A-546 was to eliminate a "practice" in the interest of insuring safety to life and property;
- (2) the fact that Mediation Agreement A-546 contains no compensatory provision nor disciplinary provision to apply in event of violative acts; these two factors are so closely related they cannot be disassociated;
- (3) the Management's letter of December 15, 1938 to the Company officers concerned (Exhibit No. 2) 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;
- (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 employes.

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.