

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

(Edward F. Carter, Referee.)

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY

(Joseph B. Fleming and Aaron Colnon, Trustees)

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railway that R. T. Daniels, the regularly assigned telegrapher at Clinton Junction, Oklahoma, shall be paid under the rules of the Telegrapher's agreement two calls as follows: (1) One call because on May 1, 1942, at a time when he was off duty train Order No. 40 was handled by the crew of train No. 51 from Weatherford to Clinton Junction and there delivered to Work Extra 1740. (2) One call because on November 19, 1943, at a time when he was off duty train Order No. 255, was handled by the crew of Extra Inspection Motor 573 East from Foss, Oklahoma to Clinton Junction and there delivered to Extra 2061 West. These acts having for their purpose the avoidance of overtime payments to Telegrapher Daniels.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of January 1, 1928, as to rules of working conditions, and rates of pay, is in effect between the parties to this dispute. A telegraph position at Clinton Junction, Oklahoma, is listed on page forty-two of the wage scale. The assigned hours for this position are 6:00 P. M. to 3:00 A. M., seven days per week, with one hour allowed for meals.

May 1, 1942, the carrier transmitted train Order No. 40 to the Telegrapher at Weatherford, Oklahoma, at 8:56 A. M., addressed to "C&E Work Extra 1740 at Clinton Junction care No. 51"; and at the same time clearance card listing Order No. 40 thereon was authorized by the train dispatcher showing time OK as of 9:01 A. M., for delivery by the crew of No. 51 to the crew of Work Extra 1740 upon arrival at Clinton Junction. The Order was handled by the crew of No. 51 from Weatherford to Clinton Junction as directed and delivered to the crew of the work extra at Clinton Junction at a time when Telegrapher Daniels was not on duty.

November 19, 1943, the Carrier transmitted train Order No. 255 to a telegrapher at Foss, Oklahoma, at 1:59 P. M., addressed to "C&E Extra Inspection Motor 573 East and Extra 2061 West at Clinton Junction, care Extra Inspection Motor 573 East"; and at the same time clearance card listing Order 255 thereon was authorized by the train dispatcher, showing time OK as of 2:09 P. M. for delivery by the crew of Inspection Motor 573 East to Extra 2061 West upon the arrival of the Inspection Motor at Clinton Junction. The order was handled by the crew of Inspection Motor 573 East from Foss, Oklahoma, to Clinton Junction, Oklahoma, as directed, and delivered to the crew of Extra 2061 West at Clinton Junction at a time when Telegrapher Daniels was off duty.

as to the intent and purpose, as well as the proper application of a rule—a complete and full understanding acquiesced in by both parties. From some source and in some manner the representatives of the organization decided to place upon this particular rule an entirely new and different construction of its proper application and interpretation, disregarding all of the history of the negotiations and records over a period of some twenty-eight (28) years, disregarding the actual practice followed and disregarding the total and complete absence of any similar request in the past. He now comes to this Board asking for support of his recent and new, as well as different, interpretation of a rule. Not a rule in the Telegraphers' Agreement on the Rock Island Railroad, even though it has been in the working rules agreement between the Telegraphers and this carrier since November 1, 1903, the date of the first working rules agreement with the Telegraphers, and has been uniformly applied and followed throughout the entire period up to this date, can safely be accepted by the Carrier as actually constituting an agreement between the Telegraphers' Organization and the Carrier if such rules are subject to change in interpretation without change in the language of the rule, or if a request for a change in the application of the rule may be submitted to this Board and such new and completely different interpretation upheld.

OPINION OF BOARD: In all essential features this dispute is identical with that presented in Docket No. TE-2932, Award No. 2926. For the reasons stated in that award, the claim in the instant case is sustained.

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 Employees involved in this dispute are respectively carrier and employees 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 the current Agreement as alleged by Claimant.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
BY ORDER OF THIRD DIVISION

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 20th day of June, 1945.

Dissent to Award 2926, Docket TE-2932
Dissent to Award 2927, Docket TE-2933
Dissent to Award 2928, Docket TE-2934
Dissent to Award 2929, Docket TE-2935
Dissent to Award 2930, Docket TE-2936

Dissent filed to Award 1713 reflects our position then and now with respect to the provisions of Article 1(b), in substance the same as Article XIII, there involved.

(s) C. P. Dugan
(s) R. R. Ray
(s) A. H. Jones
(s) R. H. Allison
(s) C. C. Cook