

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, INDIANAPOLIS & LOUISVILLE
RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Indianapolis and Louisville Railway that:

(1) The Carrier violated the provisions of Memorandum of Agreement dated July 15, 1944, when the conductor in charge of Work Extra 229 was required or permitted to receive, by telephone direct from the dispatcher a verbal train order in lieu of a written train order at Murdock, Indiana, at 2:43 P. M., June 1, 1948; and

(2) That the Carrier by this violative action established in fact a temporary telephone office at Murdock, Indiana, under the Telegraphers' Agreement, and violated the terms of the Telegraphers' Agreement by requiring or permitting an employe not covered by said agreement to there perform work covered by the agreement, thereby depriving the senior idle telegrapher of a day's pay, and

(3) That the senior idle telegrapher on June 1, 1948, be compensated for the day's work of which he was thus deprived.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing effective date of July 1, 1929, was in effect between the parties to this dispute at the time the dispute arose. Memorandum of Agreement dated July 15, 1944, between the Carrier and its employes represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Brotherhood of Railroad Trainmen, and The Order of Railroad Telegraphers is also in effect.

At 2:43 P. M., June 1, 1948, the conductor in charge of Work Extra 229 communicated by telephone with the train dispatcher, and received verbal instructions to listen to the transmission of train order No. 46, while at Murdock, Indiana, a point where no Telegraph or Telephone Operator under the Telegraphers' Agreement is located.

Train order No. 46 was addressed to train No. 40, an opposing superior train, at Bedford, and reads as follows:

"No. 40 Eng 565 wait at Bedford until 310 P. M. for Work Extra 229."

This train order was received by the telegrapher at Bedford for train No. 40, and after his repetition of the train order, as required by the operating

The Carrier holds that:

1. The Memorandum of Agreement dated July 15, 1944 was not violated.
2. Rules 1A, 3A, 3E, 3J and 7A have no bearing in the case.
3. This is not a case of "evasion" of a rule.

(Exhibits not reproduced.)

OPINION OF BOARD: The record shows that on June 1, 1948, there was no employe under the Telegraphers' Agreement working at Murdock, Indiana. At 2:43 P. M. of said day, the dispatcher advised the conductor of Extra 229, then at Murdock, to listen to the transmission of train order No. 46 which stated:

"No. 40 Eng. 565 wait at Bedford until 3:10 P. M. for Work Extra 229."

The conductor of Extra 229 listened in on the transmittal of this train order, made a copy thereof for the engineer and moved his train from Murdock to Bedford by its authority. The Organization contends that the foregoing was a violation of the Memorandum of Agreement effective July 15, 1944, paragraph 1 of which reads as follows:

"It is agreed that, effective July 15, 1944, train and engine service employes will not, except in case of emergency, be required or permitted to copy, or train dispatchers or operators be required or permitted to telephone direct to train and engine service employes, train orders (Forms 19 and 31) Clearances (Form A), or verbal instructions in lieu thereof, or take messages of record over the telephone."

It is clear that the conductor of Work Extra 229 was permitted to copy a train order transmitted by telephone contrary to the quoted part of the Agreement. The record shows further that the conductor moved his train from Murdock to Bedford without further authority. The Carrier contends that the conductor was not instructed to listen in on the transmittal of the train order, to copy it or to act upon it. In view of the action taken upon the train order, and the failure to authorize the movement of Work Extra 229 from Murdock to Bedford in any other manner when Train No. 40 was being held for it, we feel obliged to accept the statement of the Organization over that of the Carrier on this issue. The record shows that the Carrier itself accepted the statement of the dispatcher with considerable reluctance. We cannot conceive of an experienced conductor moving his train onto a main-line track against an opposing overdue superior train on a train order not directed to him unless he knew that the dispatcher intended for him to so do. We think the method used was as much a violation of the Memorandum of Agreement effective July 15, 1944, as the sending of a train order direct from the dispatcher to the conductor.

The Carrier asserts that the claim was improperly handled under Rule 4H. There is no merit in this assertion. See Awards 4456 and 4458.

It is urged also that the claim for one day's pay is not authorized by the rules even if a violation occurred. This Board has held otherwise. Awards 1220 and 4457.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of July, 1949.