Award No. 5282
Docket No. TE-5248

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Colorado and Southern Railway, that:

(1) The Carrier violated the terms of the prevailing agreement between the parties, particularly the Scope Rule and joint mediation agreement identified as Case A-1562, when, on September 16, 1949, it required and/or permitted a train service employe, not subject to the agreement, to copy by use of the telephone, train order No. 16 at Bowen, Colorado a point where no employe under said agreement is assigned, which violative act did in effect establish a temporary telegraph or telephone train order office at that point.

(2) In consequence of this violation the Carrier shall pay to Telegrapher L. A. Maes an amount equal to the day's pay of eight hours which he would have earned had he been assigned to perform the work that was his under the agreement.

JOINT STATEMENT OF FACTS: September 16, 1949 Engineer Greenwade on Extra 903 South copied Train Order No. 16 at Bowen, Colorado, at 8:00 A. M. The body of the train order states:

"Extra 6301 North meet Extra 903 South at Trinidad Yard."

No telegrapher is employed at Bowen. Organization claimed one day's pay for telegrapher L. A. Maes, who was senior idle extra employe on September 16, 1949. Carrier declined payment of the claim.

POSITION OF EMPLOYES: There is an agreement bearing date of October 1, 1948 governing the rules of working conditions and rates of pay in effect between the parties to this dispute, copies of which have been furnished to members of your Board.

The Organization contends that the Carrier disregarded the provisions of the prevailing agreement, particularly the Scope Rule and Joint Mediation Agreement A-1562, when it required or permitted Engineer Greenwade on Extra 903 South to copy (handle) Train Order No. 16 at Bowen, Colorado, a point where no employe under the agreement is assigned. The Organization further maintains that it is an undeniable fact that the work of copying, preparing for delivery, and the actual delivery of train orders is one of the primary functions of railroad telegraphers, and has been from the beginning of the industry. Only employes subject to the agreement

that the engineer copied the train order at Bowen before having been delayed at that point thirty minutes. In an attempt to support this position they cite Third Division Award No. 4577, which involved a dispute between the same parties as here in dispute, but which definitely has no analogy to the instant case: Award 4577 covers a case where an engineer copied a train order at a meeting point before being delayed at the meeting point for thirty minutes. In that case one of the crews involved was running close on the 16-hour law and it was carrier's contention that this constituted an emergency permitting the action taken. The Board sustained the position of the employes in that case. In the instant case, we have strikingly different facts and circumstances which involve the movement of an important special passenger train which was delayed due to engine running hot.

The employes have also attempted to support their position by asserting that Extra 906 North and Extra 6301 North were two separate trains, arguing that the train order provided for meet at Bowen of Extra 6301 and Extra 903. As previously explained, there are only two trains involved in this dispute, namely the northbound passenger extra and the southbound Extra 903. The fact that Engine 6301 handled the movement of the passenger extra from Trinidad to Pueblo cannot, by any stretch of the imagination, be construed as constituting two trains. The passenger extra was a through 12-car special train from Sixela to Pueblo. It has never been disputed that among managerial prerogatives is the right to assign power for the operation of all trains. Whether the passenger extra here involved was handled over the lines of this carrier by the same locomotive or by several locomotives does not alter the fact that it constituted only one train. This one train was designated, for operating purposes, as Extra 906 between Sixela and Trinidad, and as Extra 6301 between Trinidad and Pueblo.

We think that the evidence clearly warrants a denial of this claim.

OPINION OF BOARD: Under the terms of Mediation Agreement A-1562, train and engine service employes are not required or permitted to copy train orders or to block or report trains by telephone or tlegraph, except in six specified emergency conditions which are listed or defined by the Agreement as above quoted.

The extra freight train southbound and the extra passenger train northbound were by train orders given a meeting point at Bowen where no telegrapher's position existed. The passenger train was delayed by engine running hot. After the freight train had left the last point of communication prior to Bowen, the dispatcher south of Bowen by telephone call to a section foreman at Bowen requested the engineer of the freight train to communicate with him. This the engineer did by telephone about eight minutes after arrival at Bowen; and he received an order from the dispatcher not to wait for the meet but to proceed, which he did.

The claim is based upon the proposition that a telegrapher should have been called because the situation did not fall within any of the six exceptions specified in the Mediation Agreement.

FIRST. All six of the emergency conditions specified as exceptions in the Mediation Agreement define unforeseen situations, requiring immediate communication, which could not have been anticipated when the train was at previous telegraph office and which would result in serious delays to trains.

Five of these exceptions—(1), (2), (3), (4) and (6)—relate only to the train making or receiving the communication. Thus, if a train itself becomes delayed by storms, wrecks, accidents or the other situations defined in these five exceptions, it may communicate immediately, without the interposition of a telegrapher. But no other train may do so merely because this train may, although the other train may do so if it is itself also delayed by one of the situations defined in these five exceptions.

Exception (5) deals with situations where two trains are scheduled or under orders to meet or pass. Here the exception confers communication

rights only upon the train that has been delayed by the non-arrival of another train at the meeting or passing point. The train which does not arrive at the meeting or passing point on time derives no communication rights from this exception, although it may, or may not, have such rights derived from the other five exceptions.

The right to communicate, conferred by exception (5) on the train waiting at the meeting or passing point, stems from the simple fact of non-arrival of the other train without more and regardless of the cause of non-arrival. But the right to communicate does not arise or exist until a delay of thirty minutes or more has been occasioned by the non-arrival of the other train.

In this view of the Mediation Agreement, it is immaterial whether the northbound passenger train was two trains or one, or whether it was delayed by a hot box or not. Its rights to communicate are not in question here. On the other hand, the southbound freight train performed the communication complained of, merely because of the non-arrival of the other train and not because the southbound freight train was delayed by any of the conditions specified in the other five exceptions. Since the communication was performed by the engineer of the southbound freight train before thirty minutes' delay had elapsed, the Mediation Agreement was violated.

SECOND. The record is not as clear as it might be with respect to paragraph (2) of the claim. If the claimant could have performed the service on a call basis, and if he was subject to call under the terms of the agreement, the claim should be sustained to that extent only. Otherwise the claim should be sustained for a day's pay.

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 heraing 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 Mediation Agreement A-1562 was violated because none of the conditions of anv of the six exceptions was met.

AWARD

Claim sustained in accordance with the foregoing Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of March, 1951.