

Award No. 10534

Docket No. TE-9319

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert J. Ables, Referee

PARTIES TO DISPUTE:

**CHICAGO GREAT WESTERN RAILWAY COMPANY
THE ORDER OF RAILROAD TELEGRAPHERS**

STATEMENT OF CLAIM: (29) Carrier's file 0-233. Claim No. 707-109 by the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway that:

(a) the Carrier violated the terms of the Agreement between the parties when on July 26, 1955 it refused the allowance of a call of two hours pay at the time and one-half rate to Agent-Telegrapher T. E. Goin employed at Mingo account Conductor of No. 5, a person not covered by the Agreement copied for his train, Train Order Block Card No. 75 at Mingo at 11:13 P. M., a time when the Agent-Telegrapher was available but not on duty. This violates Rules 1, 16 and others of the Telegraphers' Agreement. And that:

(b) the Carrier shall now compensate Agent-Telegrapher T. E. Goin in the amount of a call allowance of two hours pay at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS and POSITION OF EMPLOYEES: The above Carrier described cases are not ready for consideration and action by your Board. They are a group of unsettled disputes involving this Carrier and this Organization which have not been handled to conclusion on the property and the right of this Organization to endeavor to settle them by further negotiations or by means other than National Railroad Adjustment Board pursuant to Article V, Section 5, of the Agreement of August 21, 1954, has been challenged by the Carrier in the Courts.

It is, therefore, our position that until the Courts have determined this matter and until these disputes have been handled as provided in Section 3, First (i) of the Railway Labor Act, as amended, they are not properly referable to your Board. Four hundred and eighty copies of this submission are being forwarded under separate cover to accommodate each of your thirty two files.

CARRIER'S STATEMENT OF FACTS: The Carrier and The Order of Railroad Telegraphers are parties to National Agreement signed at Chicago, Illinois, August 21, 1954, between participating Eastern, Western and South-eastern Carriers and Employees represented by the Fifteen Cooperating Rail-

OPINION OF BOARD: There are two principal issues in this case. The first is whether the claim is stale for not having been referred to this Board within applicable time limits; and the second is whether the Telegraphers' Agreement has been violated because a conductor telephoned a dispatcher for clearance to proceed beyond a red block signal where the train was one mile from a telegrapher's station which was unmanned at the time.

The basis of the Carrier's contention that the claim is stale, and therefore barred, is the same as under Award 10460 (this referee) viz. that the "employee or his representative" did not perfect an appeal from the decision of the highest designated officer of the Carrier within the applicable time limits of the National Agreement of August 21, 1954. This contention was sustained in Award 10460 because, under the facts, it was clear that the time had run out before a proper appeal had been taken or this Board had otherwise assumed jurisdiction of the dispute.

The facts are different in this case.

The Time Limit Rule in the National Agreement, which is a contractual time limit on a previously unlimited statutory right to refer disputes to this Board, applies to the Employees only.

Here, before the time the claim would have been barred by the Time Limit Rule, the Carrier, for the reasons discussed in Award 10460, referred the original employee claim to this Board for adjustment. This action was taken by the Carrier pursuant to its unlimited statutory privilege in Section 3. First (i) of the Railway Labor Act to refer a dispute to this Board. When the Board assumed jurisdiction of the dispute upon the Carrier's referral, there was no question remaining about the Employees perfecting an appeal within applicable time limits. Accordingly, the Carrier's contention that this Board has no jurisdiction to consider the claim on its merits cannot be sustained.

On the merits of this claim, the undisputed facts are that upon encountering a red block signal the conductor telephoned the dispatcher and received and copied a Block or Caution Card (a communication of record) to proceed through the blocked signal. This occurred one mile from a Telegrapher's station where the agent was off duty. He was not called to perform the work.

The rules in issue are:

Rule 1 — Scope

"This agreement shall govern the employment and compensation of:

- Agents (included in Wage Scale)
- Agent-Telegraphers
- Agent-Telephoners
- Telegraphers
- Telegrapher-Clerks
- Telephone Operators (except telephone switchboard operators)
- Towermen
- Levermen

Block Operators

Staffmen

Car Distributors (who are required to perform telegraph duties)

Manager-Wire Chief-Telegraphers

Wire-Chief-Telegraphers"

Rule 16 — Handling Train Orders

"No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency in which case the telegrapher will be paid for the call. (See Addendum No. 3)."

Addendum No. 3

"MEMORANDUM OF AGREEMENT between the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors, Brotherhood of Railroad Trainmen, Order of Railroad Telegraphers and the Chicago Great Western Railroad Company.

In settlement of the employes' request for a rule to govern the handling of train orders, messages and/or reports of record by train and engine service employes, it is agreed that train and/or engine service employes will not be required to call dispatchers on telephone in connection with train movement or take train orders over the telephone, except in emergency.

It is understood and agreed that:

(a) telephone conversation to give or receive information about work, and

(b) telephone conversation to give or receive information about the arrival of trains, and

(c) at junction points and at spur tracks, the operation of which prevents train and engine crews from having constant observation of passing trains, at stations where telegraphers are not now employed, telephone check on overdue trains,

will not be construed as a violation of this agreement.

"NOTE: Emergency is defined as follows: Storms, fogs, casualties, accidents, obstructions caused by wrecks, washouts, high water, slides and snow blockades, etc., unusual delay due to failure of fixed signal to clear, unusual delay to trains due to hot boxes, engine or other equipment failures, and break-in-twos, or other unforeseen situations where life or property may be in jeopardy, requiring immediate attention, which could not have been anticipated when train was at previous telegraph office and which would result in serious delay to trains."

The Employees contend that the agent was nearby and available and that he should have been called to perform the work since the handling of Block Cards, which they maintain are equivalent to Train Orders, is work reserved to telegraphers under the Scope Rule and Rule 16. In addition, they contend that a minimum call payment is required even if emergency conditions existed — which they do not accept — at the time of the telephone call since the Rule for Handling Train Orders requires payment whether an emergency exists or not.

The Carrier contends that a Block Card is not a Train Order; that even if it were there was no violation because the Train Order was not handled at a telegraph or telephone office as required under Rule 16; and that there was no violation of the Scope of Work Rule because an emergency existed, which, under Addendum No. 3, is an exception to when train and/or engine service employes may not call dispatchers on the telephone in connection with train movement or to take train orders.

That the development of the telephone and the subsequent expansion of its use in railroad operations have brought about serious difficulty in the interpretation of applicable telegraphers' agreements is an understatement. Almost 100 awards have been cited by the parties as being decisive of the issues here. The probative value of these decisions roughly balance out equally between the parties. Countless other awards, not dispositive of basic questions, have been issued on related points concerning the scope of the telegrapher's work and the exceptions thereto.

In this case, the Carrier describes the "legislative history" of each of the rules applicable to this claim, explaining how the telegraphers have sought to enlarge the Scope of Work Rule and how the Carriers have resisted this. Special attention is given to the adoption of Addendum No. 3 in 1939, "in settlement of the employe's request" for a new rule which would have given them the exclusive right to handle all communications of record. Because of the tenuous balance on which existing relations hinge, the Carrier appeals for a decision here which will interpret the existing rules and which will not have the effect of writing new rules. The decision here will be so limited. It will be based on the narrowest possible grounds — against the Carrier — by the application of existing rules to the facts. In the absence of new agreements to meet the fundamental changes brought about by the increased use of the telephone it would take the wisdom of Solomon and the courage of Daniel to do more.

There are four major questions dividing the parties here.

1. Was the Block or Caution Card a Train Order under the circumstances?
2. If the Block Card was a Train Order must the claim be paid under Rule 16, whether an emergency existed or not; or, must the claim be denied because the Train Order was not handled "at telegraph or telephone offices where an operator is employed"?
3. If the Block Card was not a Train Order, or if it was but was not handled at a telegraph or telephone office, must the claim be paid under Addendum No. 3, which limits train and/or engine service employes from calling dispatchers on the telephone in connection with train movements or to take Train Orders over the telephone?

The Employees contend that the agent was nearby and available and that he should have been called to perform the work since the handling of Block Cards, which they maintain are equivalent to Train Orders, is work reserved to telegraphers under the Scope Rule and Rule 16. In addition, they contend that a minimum call payment is required even if emergency conditions existed — which they do not accept — at the time of the telephone call since the Rule for Handling Train Orders requires payment whether an emergency exists or not.

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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert J. Ables, Referee

PARTIES TO DISPUTE:

CHICAGO GREAT WESTERN RAILWAY COMPANY
THE ORDER OF RAILROAD TELEGRAPHERS

STATEMENT OF CLAIM: (30) Carrier's file 0-240. Claim No. A-8 by the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway that:

(a) the Carrier violated the Agreement between the parties, Rule 1 and others, when on September 17, 1955, it required or permitted Conductor Casey of Work Extra Y-46, a person not covered by the Agreement, to copy for his train, Train Order No. 250 at Roseport, a closed station, thus creating a train order office at that point on that day.

(b) the Carrier shall now compensate the senior employe, idle that day on the Minnesota Division, Mail Line — WM&P Districts Seniority District (L. G. Meek) in the amount of eight (8) hours pay at the straight time rate and for whom such compensation is claimed.

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