

**Award No. 11644**  
**Docket No. TE-10390**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**David Dolnick, Referee**

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**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 the Chicago, Burlington and Quincy Railroad that:

1. Carrier violated the agreement between the parties when, on May 18, 1957, at Burgess Junction, Illinois, it required or permitted an employe not covered by the agreement to handle (receive, copy and deliver) a train order.

2. Carrier shall compensate Mrs. V. L. Pittard, senior idle extra employe on the seniority district, in the amount of \$16.93, a day's pay.

**EMPLOYES' STATEMENT OF FACTS:** The agreements between the parties are available to your Board and by this reference are made a part hereof.

Burgess Junction, Illinois is a station on the Aurora Division of this Carrier's lines. There are no positions under the Telegraphers' Agreement at this station.

On May 18, 1957, at Burgess Junction, Illinois, with no emergency condition existing, Engineer Fuska of Extra 311 East, by use of telephone, received and copied from the train dispatcher the following train order:

"Train Order No. 6

May 18, 1957

TO C&E Extra 311 East                      AT Burgess Jct  
No 86 has arrived at Burgess Jct

A E S

Made Complete      545 AM      Fuska OPR."

The Carrier respectfully asserts that all data herein and herewith submitted have previously been presented to the Employees.

**OPINION OF BOARD:** No telegrapher's position at Burgess Junction, Illinois, is covered under the Agreement. None has ever been employed there. There is no office or station at Burgess Junction. A register book is maintained at the junction in which trainmen register the time a train passes the junction to inform other train crews.

On May 18, 1957 the train crew on Train No. 86 failed to register the time it passed Burgess Junction. When Extra Train No. 311 arrived at the junction it became necessary for that crew to ascertain if Train No. 86 had passed. The Engineer of Extra Train No. 311 telephoned the train dispatcher and copied the following train order check:

"Train Order No. 6

May 18, 1957

TO C&E Extra 311 East                      AT Burgess Jct  
No 86 has arrived at Burgess Jct

A E S

Made Complete      545 AM      Fuska OPR."

Petitioner contends that Carrier violated the Mediation Agreement dated December 8, 1938 and the Scope Rule of the Agreement. The handling of train orders, Petitioner argues, is reserved to employees covered by the Agreement.

The Mediation Agreement of December 8, 1938 reads as follows:

#### "MEDIATION AGREEMENT

It is mutually agreed that the dispute, National Mediation Board Case A-546, jointly submitted to mediation by representatives of The Chicago, Burlington & Quincy Railroad Company, Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, The Order of Railroad Telegraphers and The American Train Dispatchers' Association (the last-named six organizations representing employees of the carrier) is hereby disposed of as follows:

(1) At points where telegraphers are employed, train dispatchers will not be required nor permitted to transmit train orders or handle block by telephone or telegraph direct to train and engine service employees except in emergency; nor will train and engine service employees be required or permitted to call dispatcher or a telegrapher at another station for the purpose of taking train orders or to block trains except in emergency.

(2) At points where there is no telegrapher employed, train and engine service employees will not be required nor permitted to block trains; and, other than as provided for in Rule 54 of Conductors' and Trainmen's schedules, will not be required or permitted to copy train orders except in emergency.

(3) It is further understood and agreed that:

- (a) telephone conversation about work, and
- (b) telephone conversation about probable arriving time of trains, and
- (c) at junction points and spur tracks 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; 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.

This agreement shall become effective as of January 1, 1939, and remain in effect until changed in accordance with the provisions of Section 6, Railway Labor Act.

Signed at Chicago, Illinois, the 8th day of December, 1938."

Some time in the early part of 1948 a question arose about the meaning and intent of the Mediation Agreement above referred to, particularly Section 3 thereof. A conference was held on February 27, 1948 between this Carrier and the General Chairmen of the Organizations who are parties to that Mediation Agreement. On March 6, 1948 Carrier wrote to all of the General Chairmen confirming the discussion and the agreement reached at the conference on February 27. This letter reads as follows:

"March 6, 1948

A-546

Mr. C. H. Atkins, General Chairman, BLE, Chicago  
Mr. V. E. Secrest, General Chairman, BLF&E, Chicago  
Mr. F. L. Smith, General Chairman, ORC, St. Joseph  
Mr. V. R. Roberts, General Chairman, BRT, Creston  
Mr. C. A. Smith, General Chairman, ORT, Chicago  
Mr. J. W. Frey, General Chairman, ATDA, Lincoln

Gentlemen:

Please be referred to correspondence originating with my letter of February 9, 1948, and to discussion at conference on February 27, 1948, in reference to the provisions of Mediation Agreement A-546.

At the conference referred to in the preceding paragraph, I stated to you that the Management is sincerely interested in reaching an understanding with representatives of the parties to this Mediation Agreement which will, insofar as it may be possible, eliminate cause for misunderstanding, thus affording opportunity for almost complete compliance with its terms. At the outset there appeared to be some slight misunderstanding relative to the proper interpretation to be placed upon the provisions of Section 3(c) of said agreement which reads:

'It is further understood and agreed that:

- (c) at junction points and spur tracks where telegraphers are not now employed, telephone check on overdue trains
- will not be construed as a violation of this agreement.'

In answer to a direct question, Mr. C. A. Smith stated that shortly after the effective date of this Mediation Agreement a question arose as to the propriety of requiring or permitting other than telegraphers to copy a train order check of the register at the points referred to in the above-quoted provision. Mr. Smith further stated that he discussed this question with a Vice President of The Order of Railroad Telegraphers who agreed that such service would not be in violation of the purpose and intent of this particular provision. A poll of those present indicated that Mr. F. L. Smith, Mr. J. W. Frey, Mr. A. B. Coats and Mr. V. R. Roberts concurred in the interpretation which had been expressed by Mr. C. A. Smith. Mr. C. H. Atkins expressed a contrary opinion and Mr. V. E. Secrest, according to our records, had little or nothing to say. This is probably because it would indeed be a rare occurrence for a locomotive fireman to copy a train order of any kind.

The second point under discussion involved the interpretation of the 'Note' which, in fact, is an interpretation of the substance of the agreement. This question is resolved to the intent of the parties in applying that part of the agreement dealing with emergencies — more specifically — whether the delay encountered is limited to the train manned by the individual (conductor or engineer) who is required to copy a train order or whether it was the intention to permit a conductor or engineer to copy a train order which will permit moving of their train which is delayed as a result of some other train suffering unusual delay as a result of any one of the incidents referred to in the 'Note'. After some discussion, our records indicate that all of those present were in agreement that a conductor or engineer may be required to copy a train order, even though an opposing train is involved in one of the incidents more specifically covered in the 'Note'.

We appreciate your willingness to frankly and openly discuss these problems and we stated that we would make a matter of record our understanding of what took place at the conference. We further stated that this information would be communicated to you and if it later develops that all of the parties concur in what we have recorded herein and will so advise, we will then undertake to draft

instructions to interested officers in an endeavor to bring about a condition which will eliminate or largely minimize cause for further complaint. We request, therefore, that you consider the content of this letter and advise your reaction thereto.

Yours truly,

/s/ J. E. WOLFE"

On March 31, 1948 Petitioner's General Chairman, who was at the conference on February 27, 1948, wrote to Carrier as follows:

"March 31, 1948

Mr. J. E. Wolfe,  
Assistant To Vice President,  
Chicago, Burlington & Quincy RR,  
547 West Jackson Boulevard,  
Chicago 6, Illinois.

Dear Sir:

In acknowledgement of your letter of March 6, addressed jointly to All General Chairmen of the organizations parties to Mediation Agreement A-546, having reference to exchange of correspondence and to discussion at conference on February 27, 1948, concerning the provisions of Mediation Agreement A-546.

According to my notes, as made at the conference, it is my understanding that you were to write the General Chairmen jointly along with which you would submit a tentative set of instructions to the interested officers outlining the procedure to be followed in applying the provisions of Mediation Agreement A-546 subject to our approval and that you would convene the General Chairmen for further consideration of such instructions before they are issued.

Yours truly,

/s/ C. A. Smith  
General Chairman, O.R.T."

Petitioner argues that these letters are, at best, only evidence of an alleged interpretation and since they were not presented and considered on the property they may not now be considered by the Board.

The record does not disclose the correspondence exchanged nor the subject of any conference held on the property before this claim was filed with this Board. It is unfortunate that the record is so incomplete. We may not go beyond that record and assume that the letters were not considered on this property.

It is true that, generally, matters raised for the first time on appeal to this Board may not be considered. This does not apply to Agreements and agreed interpretations of such Agreements. Both parties are charged with full knowledge of applicable rules, agreements and interpretations. These are always proper for Board consideration whether they were or were not

specifically presented and discussed on the property. When a claim is based upon a violation of an agreement, such as here, we are obligated to consider not only that agreement, but any others which give meaning and intent to the specific applicable rules or sections. The letters referred to are such agreements. They were written after a conference on the interpretation of the applicable Agreement. Petitioner nowhere denies the substance of the interpretation set out in Carrier's letter of March 6, 1948. For all intents and purposes the letters represent an agreement between the parties on the interpretation of the Mediation Agreement of December 8, 1938. As such they must be considered by this Board even though they were not presented and considered on the property.

Carrier in the letter of March 6, 1948, above quoted, said:

"In answer to a direct question, Mr. C. A. Smith stated that shortly after the effective date of this Mediation Agreement a question arose as to the propriety of requiring or permitting other than telegraphers to copy a train order check of the register at the points referred to in the above-quoted provision. **Mr. Smith further stated that he discussed this question with a Vice President of The Order of Railroad Telegraphers who agreed that such service would not be in violation of the purpose and intent of this particular provision.**" (emphasis added)

This fact, Petitioner does not deny.

The reason for Petitioner's agreement to the interpretation of the Mediation Agreement is understandable. It is consistent with Carrier's Operating Rule 83(b) which reads as follows:

"83(b) Whenever a train or engine requires check of overdue trains in meeting the requirements of Rules S-83 and D-83 at a junction or at a spur track where operators are not now employed, check of overdue trains transmitted by telephone must be copied by conductor, yard foreman or engineman as required by Rule 905 and must be written upon Form 19 train order."

The train order involved in this dispute was a check of an overdue train. It was handled by an engineer at a junction where no telegrapher was employed. The agreement reached at the conference on February 27, 1948 and Carrier's Operating Rule 83(b) contemplate that such a train order check is not a violation of the Agreement or of the Mediation Agreement.

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

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 26th day of July 1963.