

Award No. 12810
Docket No. TE-11638

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
WESTERN MARYLAND RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Western Maryland Railway Company, that:

CASE NO. 1 (H-106-A)

1. Carrier violated the Telegraphers' Agreement when it caused, required or permitted trainmen not covered by the Telegraphers' Agreement to handle (receive, copy, repeat and deliver) train orders at points where there are no operators and there were no emergencies connected with the trains involved.

2. Carrier shall compensate the senior idle employe available, extra employe preferred, at the time of violation of the Agreement. Section (a), Section (c), No. 1 of the Telegraphers' Agreement, signed February 19, 1957, by the Western Maryland Railway Company and The Order of Railroad Telegraphers.

CASE NO. 2 (H-108)

3. The Carrier violated the Telegraphers' Agreement when it caused, required or permitted trainmen not covered by the Telegraphers' Agreement to handle (receive, copy, repeat and deliver) train orders at points where there are no operators, and there were no emergencies connected with the trains involved.

4. Carrier shall compensate the senior idle employe available, extra employe preferred, at the time of violation of the Agreement. Section (a), Section (c), No. 1 of the Telegraphers' Agreement, signed February 19, 1957, by the Western Maryland Railway Company and The Order of Railroad Telegraphers.

EMPLOYEES' STATEMENT OF FACTS: There are in full force and effect collective bargaining agreements entered into by and between Western Maryland Railway Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred

6. 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 Opinion of this Division in Award 5282 was as follows:

"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 telegraph, 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 hearing thereon;

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

AWARD

Claim sustained in accordance with the foregoing Opinion."

We particularly desire to emphasize the holding of the Board in the Opinion reading as follows:

"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."

The Agreement of February 19, 1957, is very positive in its terms that the excusable handling of train orders must be by the train service employees of the train that has suffered one of the enumerated occurrences. Further, we have shown interpretation of the rule by this Division, which fully confirms our construction of the rule. Without, however, in anywise detracting from our stated position, it can be shown that the facts in the instant case do not support the Carrier's decisions declining the claims.

In Case No. 1 (ORT Exhibit No. 2), Carrier officers say that Reading Extra 487 East was delayed at Guilford due to "train separation caused by broken drawhead and knuckle on the 78th and 106th cars in train." In paragraph 9, Employees' Statement of Facts, we have shown that Reading Extra 487 East arrived at Guilford at 10:42 P.M. and departed at 2:45 A.M. This train was on the eastbound main track between Conboy and Brandon.

Train Order No. 201, addressed to C&E, Reading Extra 624 West at Plainfield (paragraph 4, Employees' Statement of Facts), restricted the movement of that train in order that two eastbound extras could have precedence. There was nothing blocking the westbound main track and no train had suffered any casualty in anywise pertaining to or affecting use of the westbound main. In other words, the train order addressed to Reading Extra 624 West at Plainfield was simply a routine train order giving the two eastbound trains right over the westbound train.

In ORT Exhibit No. 2 Chief Train Dispatcher Booth contended

"This order was issued only because of this train trouble * * *."

Where is the proof to support such conclusion? It is not unusual to run trains by the use of train orders against the current of traffic in double track territory. However, if we should indulge in pure speculation and assume for the moment that the conclusion of Mr. Booth is probably correct, it still does not support his theory. What he means is that using "hindsight" he saw no reason to have run the two eastbound trains against the current of traffic from Conboy to Brandon, except for the operational difficulties encountered by Extra 487 East. Thus, if we carry on the assumption for the sake of argument, we still have the order addressed to Reading Extra 624 West at Plainfield, because of a desire of the Management or "in order to" grant precedence in operation to two eastbound trains over the operation of one westbound train. This simply represents a managerial choice in evaluating the operating rights of trains, and is inherent in the use of train orders to effectuate such purpose. Thus, the giving of the orders to Reading Extra 624 West at Plainfield was not proximately caused by any delay to Reading Extra 487 East, but simply a choice of the management to expedite the movement of two eastbound trains as against the movement of westbound Extra 624.

As to the order copied by conductor Barnhart at Conboy, addressed to Conductor and Engineer of Extra 241 East, one could indulge the hypothesis that but for the delay of Reading Extra 487 East, the train would not have been diverted from the eastbound main to the westbound main between Conboy and Brandon. He again, however, we would emphasize that Extra 241 East had not suffered any occurrence enumerated in the provisions of Section (e). The delay, if it had been suffered, would be nothing more than usual freight train operation, and if the needs of the situation made it appear advisable to issue the order, the Carrier could not do less than respond in the amount of compensation agreed to in the February 17, 1957 Agreement. Extra 241 East was not involved in any emergency situation and the most that could be said would be that due to the delay of another train, except for the issuance of the order, Extra 241 East would have suffered some delay.

As to Reading Extra 612 East getting the same order at "YD" Hagerstown, there was no violation at Hagerstown, because the train order was copied by the telegrapher on duty at "YD." He made the delivery to the Conductor and Engineer of Reading Extra 612 East in the usual manner.

Turning now to the facts in Case No. 2. The Carrier contended that this order was issued to Extra 44 East at Brandon because Reading Extra 302-489-484 was being delayed "with broken knuckle on 128th car in train" at West Lurgan. We have shown that it is 1 mile from West Lurgan to Lurgan (paragraph 26); that it is 12 miles from Brandon to Lurgan (paragraph 24). Further, we have shown (paragraph 25) that Extra 302-489-484 arrived at West Lurgan at 11:20 P. M. and that Extra 44 East did not leave "NC" Tower until 11:50 P. M. (paragraph 23). Further, conductor Barnhart copied the order at Brandon at 12:40 A. M. (paragraph 21), and Extra 302-489-484 departed West Lurgan at 12:45 A. M. In other words, at the time the order was copied, Extra 44 was 11 miles behind Extra 302-489-484, and could not have been delayed a single minute by any difficulty had by Extra 302-489-484 unless it could be said that Extra 44 East was traveling in excess of 120 miles an hour.

Not only is it mathematically certain that Extra 44 East could not have been delayed a single instant by Extra 302-489-484, but Section (e) of the February 17, 1957 Agreement provides:

"Emergencies as specified in Section (c) of this rule shall include only * * * that could not have been anticipated by the dispatcher when the train was at the last previous open telegraph office. * * *."

Extra 302-489-484 arrived at West Lurgan at 11:20 P. M., 30 minutes before Extra 44 East ever left "NC" tower 38 miles away. Not only could the need for the train order have been anticipated, but it could have been issued to the telegrapher on duty at "NC" tower. Thus, it is clear that not only is the Carrier's contentions as to rule interpretation incorrect, but in the application of the admitted facts, its declination of these claims would not be correct under its own hypothesis.

CONCLUSION

We have shown that the clear meaning of the Memorandum of Agreement dated February 17, 1957, excuses "the handling" of train orders by train service employes of the train that has suffered one of the enumerated occurrences. Further, we have shown by the undisputed facts that even if the Carrier's theory of interpretation were correct, such facts do not support the Carrier's decisions rendered in these two claims.

The Carrier has not disputed the measure of compensation requested. The amounts of compensation under varying circumstances are set forth in Memorandum of Agreement dated February 17, 1957, and reference is made therein to Rule 12 (d). This rule provides:

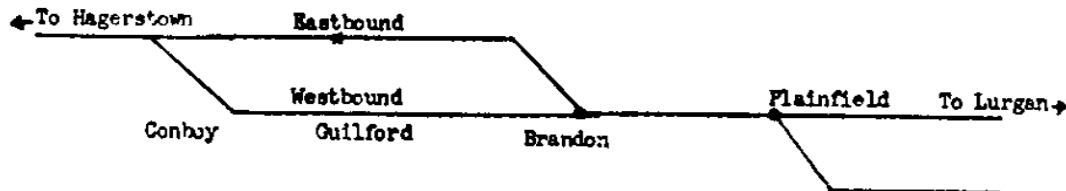
"Employes notified or called to perform work not continuous with the regular work period shall be allowed a minimum of three (3) hours at pro rata rate for two (2) hours' work or less, and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis."

We have shown the violation of the Agreement and the amount of compensation that the Carrier has agreed to pay in cases of such violations. Employes are entitled to an award sustaining the claims as presented.

WHEREFORE, Employees request the Board upon final consideration of this dispute, that award be entered sustaining the claims as presented.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: A sketch of that portion of the railroad involved in this claim follows:



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Because of grade conditions between Conboy and Brandon, trains operate on the opposing track, i.e., trains use the left track instead of the right track. The distance between Conboy and Brandon is 7.2 miles, and between Plainfield 4.4 miles. Interlocking signals, remotely controlled from Hagerstown, are located at Conboy, Brandon and Plainfield. Pole telephones are situated at Conboy, Guilford and Plainfield.

On January 12, 1959, train Extra 487 was dispatched from Hagerstown at 9:15 P.M. At 10:12 P.M., the train separated at Guilford, Pa., because of a pulled drawhead in the 78th car, and a broken knuckle in the 106th car. The break-in-two blocked the eastbound track and a crew member notified the dispatcher of the accident by telephoning from Guilford. At the time of the accident, train CSD-96 (Extra 241), which had been dispatched from Hagerstown at 10:16 P.M., was following the disabled train, and Extra 624 West was approaching from the opposite direction. Train CSD-96 was stopped at Conboy and Extra 624 at Plainfield by the interlocking signals. In order to run two fast freight trains around the disabled train, the following order was issued by the dispatcher to the crews of Extras 241 East and 624 West:

"Extra 241 East and Reading Extra 612 East have right over opposing trains on westward track Conboy to Brandon."

This order was received by the crew of Extra 624 West at Plainfield at 11:59 P.M., and by the crew of Extra 241 East at Conboy at 12:12 A.M. Reading Extra 612 departed from Hagerstown at 12:12 A.M., and was issued the order by the operator on duty at YD office, Hagerstown. Extra 487 East was delayed at Guilford 4 hours and 50 minutes as a result of the accident.

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On March 22, 1959, train Extra 302-489-484 East separated at West Lurgan because of a broken knuckle on the 128th car in the train. The accident blocked the eastbound track. In order to run train Extra 44 East around the disabled train, the following order was given to the crew at Plainfield:

"Extra 44 East has right over opposing trains on westward track Plainfield to Lurgan. Westward trains get order at Lurgan."

POSITION OF CARRIER: This case involves the interpretation and application of a Memorandum of Agreement between the Western Maryland Railway Company and The Order of Railroad Telegraphers dated February 19, 1957, as revised July 1, 1959, reading as follows:

"MEMORANDUM OF AGREEMENT
BETWEEN
WESTERN MARYLAND RAILWAY COMPANY
AND
THE ORDER OF RAILROAD TELEGRAPHERS

IT IS HEREBY AGREED:

Section (a). No employe other than those covered by agreement between the Western Maryland Railway Company and The Order of Railroad Telegraphers, effective February 1, 1951, and train dispatchers shall 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 emergency) in which case the employe shall be paid for a call, as provided in Rule 12(d).

Section (b). If instructed by train dispatcher or other authority to clear train or trains before going off duty, leaving clearance card and/or orders in some specified place for those to whom addressed, employe shall be paid a call as provided in Rule 12(d) for each train cleared.

Section (c). If train orders or other messages of record governing the movement of trains are copied by persons other than those specified in Section (a) of this rule in other than emergency as defined in Section (e) of this Memorandum of Agreement at a location where an employe under this Agreement is not employed, the telegrapher first out on the extra list, or if no extra telegrapher is available, then the senior idle regularly assigned qualified telegrapher at the nearest location to the point on the Division where the train order is copied shall be notified with a copy to the Local Chairman and paid as follows:

1. A call as provided in Rule 12(d) for each train order copied except that only one (1) call shall be allowed to any one individual if more than one (1) train order is copied at the same location during a consecutive two-hour period.
2. Where a position is abolished subsequent to February 19, 1957, the penalty for orders copied at that location will be one (1) minimum basic day's pay except that only one (1) day's pay shall be allowed to any one individual if more than one (1) train order is copied at the same location during a consecutive eight-hour period.
3. If train orders are copied in emergency as defined in Section (e) at locations where no employes covered by this Agreement are employed, no claims will be allowed.

Section (d). An employe shall not be considered as 'idle' within the meaning of this rule if on leave of absence, vacation or sickness, but shall apply to an employe who is not working on assigned days off.

The only question for our decision is whether the conditions set out in Section (e) of the Memorandum of Agreement, constituting the exception stated in Section (c) of the Agreement are meant to apply only to the disabled train actually experiencing the trouble, or to other trains that may, as a result of such disability, be incidentally delayed or affected.

The pertinent sections of the Memorandum of Agreement entered into on February 19, 1957, are as follows:

"Section (c). If train orders or other messages of record governing the movement of trains are copied by persons other than those specified in Section (a) of this Rule in other than emergency as defined in Section (e) of this Memorandum of Agreement at a location where an employe under this Agreement is not employed, the senior qualified idle extra telegrapher, or if no senior extra telegrapher is available, then the senior idle regularly assigned qualified telegrapher at the nearest location to the point on the division where the train order is copied shall be notified with a copy to the Local Chairman and paid as follows:

* * * * *

3. If train orders are copied in emergency as defined in Section (e) at locations where no employes covered by this Agreement are employed, no claims will be allowed.

* * * * *

Section (e). Emergencies as specified in Section (c) of this rule shall include only casualties or accidents, storms, engine failures, wrecks, obstructions to tracks, washouts, earthquakes, slides or unusual delays due to hot boxes or break-in-two, that could not have been anticipated by the dispatcher when the train was at the last previous open telegraph office, and which would result in serious delay to traffic."

It is Petitioner's contention that only the crew of the train directly involved in a "break-in-two" is authorized by the Memorandum of Agreement to handle its own train orders; that this is indicated in Section (e) by the use of the word "train" in the singular, denoting but one train—the disabled one; that it authorizes that crew alone to handle train orders regardless of how many trains may be affected or delayed as a result of the emergency created by the disabled train.

Carrier contends, to the contrary, that the word "train" as used in Section (e), applies to any train that has passed the last open telegraph office prior to the train dispatcher's being made aware of the occurrence or emergency that would subject such train to serious delay.

Section (e) of the Memorandum of Agreement contains this language; "unusual delays due to hot boxes or break-in-two, that could not have been anticipated by the dispatcher when the train was at the last previous open telegraph office, and which would result in serious delay to traffic."

Train orders are used to control and expedite the movement of trains. In the instant case, a train became disabled on account of breaking in two while moving in an easterly direction on the eastbound main track. Noth-

ing was to be gained and no reason existed for issuing a train order to that train. It could not clear the eastbound track until the defective condition of the cars was corrected, or the crippled cars were otherwise disposed of. Two other eastbound trains were delayed because of the emergency and were ordered to use the westbound track to facilitate the movement of the trains. It is illogical to assume that the Carrier would involve in such a vain and useless act as to enter into an Agreement that would permit the issuance of a train order without penalty only to a train whose movement could in no manner be expedited by means of a train order.

Trains are normally controlled and dispatched on this sub-division by means of a centralized control system. Train orders are used in emergencies. The only way in which a delay to traffic could be avoided or reduced in the instant case was by the issuance of a train order to a member of the crew of a train affected, which train had already passed the last open telegraph office prior to dispatcher having knowledge of the difficulty of the train with a "break-in-two" on the main eastbound track.

The test in situations of this kind in determining whether Carrier shall pay a penalty where train orders are issued by a dispatcher is whether or not the delay due to a "break-in-two" could or could not have been anticipated by the dispatcher when the train carrying the traffic in the delay was at the last open telegraph office. Certainly, if the dispatcher was not aware of the "break-in-two", he could not have anticipated the delay.

The Agreement of February 19, 1957, was negotiated to cover instances such as are involved in this case. The Agreement, therefore, is entirely clear that the intent is to enable Carrier to avoid delay to traffic without incurring penalty.

As to Case No. 2, it is Petitioner's contention that, notwithstanding the outcome of Case No. 1, the claim in Case No. 2 should be sustained, as there was but one break involved that it is alleged caused a delay and that the train which received the train order from the dispatcher was not actually affected because the disabled train involved had set off the defective car and proceeded ahead before the arrival of the train whose crew member had received the train order from the dispatcher at Hagerstown, that the train receiving the train order was not even incidentally affected by the "break-in-two"; that the train dispatcher simply misjudged the time it would take the disabled train to set off the defective car; that the rule does not list such misjudgment as a condition permitting handling of train orders by crews.

It is not disputed that the train crew receiving the train order had passed the last open telegraph office before the dispatcher was aware of the breakdown. There were two extra trains on the track behind the disabled train. The train at Plainfield was a fast freight. It was Carrier's desire to give preference to the movement of that train over the two eastbound extras. This determination and preference rests with the Carrier. It doesn't appear that at the time the train crew received the train order, the dispatcher had been advised as to how long the disabled train would be delayed. We cannot say that this indicated a lack of judgment on the part of the dispatcher. For the foregoing reason and that stated in discussing Case No. 1, we believe this claim should, also, be denied.

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 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 has not been violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1964.