Award No. 13904
Docket No. TE-13190

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION (Formerly The Order of Railroad Telegraphers)

JOINT TEXAS DIVISION of Chicago, Rock Island and Pacific Railroad Company — Fort Worth and Denver Railway Company (Burlington-Rock Island Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Joint Texas Division of Chicago, Rock Island and Pacific Railroad and Fort Worth and Denver Railway, that:

1. Carrier violated the Agreement between the parties when on November 11 and 18, 1960, it required or permitted Extra Gang Foreman C. M. Leazor, a person not covered by the Agreement, to handle communications of record at Karen, Texas.

2. Because of these violations Carrier shall compensate E. R. Lummus, idle employe, November 11, 1960, in the amount of one (1) day's pay of eight (8) hours; and Carrier shall compensate D. L. Knox, senior idle employe, November 18, 1960, in the amount of one (1) day's pay of eight (8) hours.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective June 15, 1956, as supplemented and amended, is available to your Board and by this reference is made a part hereof.

This dispute arose from Carrier's action of requiring or permitting Extra Gang Foreman, C. M. Leazor, to transmit communications of record from Karen, Texas to the Train Dispatcher. Karen is a closed station. The communications of record involved are as follows:

"(from) Karen, Texas, November 11, 1960

To – Dispatcher

Change slow order to read
MP 97 Pole 10 to MP 98 Pole 30
Passenger trains 30 MPH
Freight trains 20 MPH

/s/ C. M. Leazor."

The Board must find in this docket the custom and practice has been for many years that section forces have communicated by telephone with the dispatcher to relay information upon which slow orders, or changes in slow orders, may be based. Under the principles laid down in Awards 10387 and 10425, this practice should control the instant dispute.

The record of the practice on this property also completely disposes of any contention Petitioner might make regarding Rule 1(b). Of course, there have been no changes in the method of handling telephone conversations of the type described herein, for many years. No work has been taken out from under the Telegraphers' Agreement at Karen, Texas, since they never had anyone employed at that point.

In conclusion, the Carrier asserts this claim must be denied, by reason of the several defenses set forth herein. Restated briefly, the following necessary conclusions require an award in favor of the Respondent:

1. Karen, Texas is a point where no telegrapher is employed, where no telegrapher ever has been employed, and is not included within any rule of the schedule with Telegraphers.

2. The telephone conversation between Section Foreman Leazor and the dispatcher was not a "communication of record," but merely an informational message which enabled the dispatcher to formulate a slow order.

3. Rule 33 of the schedule has no application to this case because Karen is not a telephone office and the telephone conversation was not a train order. The history of negotiating this rule shows conclusively that the Organization failed to obtain the rule which they now rely on for payment.

4. Previous settlements on this property, namely the withdrawal of cases with prejudice by the Organization at blind sidings confirms Carrier's position that this conversation did not involve Rule violation.

5. The past practice on this property has been for many years to permit employes other than telegraphers to engage in telephone conversations with dispatchers from blind sidings, particularly informational conversations regarding track conditions and changes in slow orders.

On the basis of this record, the claim must be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The record in this case does not contain sufficient evidence to prove the violation claimed by Employes.

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of October 1965.