

Award No. 13956

Docket No. TE- 13740

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis-San Francisco Railway, that:

1. Carrier violated and continues to violate the Agreement between the parties when, commencing on July 19, 1961 and continuing thereafter, it requires or permits employes of another railroad, not covered by said Agreement, to handle (receive, copy and deliver) train orders governing the movement of trains over the St. Louis-San Francisco Railway.

2. Carrier shall be required to compensate in the amount of a day's pay (8 hours) the senior idle telegrapher, extra in preference, on each day the violation occurs commencing July 19, 1961 and continuing thereafter on a day to day basis until the violation is corrected.

3. Carrier shall be required to permit a joint check of its records, including examination of train sheets and train order books of train dispatchers at Chaffee, Missouri, or such other point from which trains on this territory are dispatched, to determine exact number of violations.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective May 16, 1928, revised effective May 16, 1953, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The Missouri and Illinois Railroad (M&I) operated for many years between Salem, Illinois and Bismarck, Missouri, crossing the Missouri Pacific Railroad (MP) at Flinton, Illinois and the St. Louis-San Francisco Railway (Frisco) at Ste. Genevieve, Missouri. Between Flinton and Ste. Genevieve, M&I trains were ferried across the Mississippi River. This ferry service was abandoned for reasons not pertinent to this case.

The M&I made arrangements to operate its trains over the tracks of other carriers. An M&I train moving from Salem to Bismarck uses the MP tracks from Flinton southward to North Junction, thence generally westward on the tracks and bridge of the Southern Illinois and Missouri Bridge Company, crossing the Mississippi River to Illmo, Missouri, from Illmo southwestward on the St. Louis-Southwestern (Cotton Belt) tracks to Rockview, Missouri, thence northward on Frisco tracks to Ste. Genevieve where it reenters M&I tracks and continues to Bismarck. Trains from Bismarck to Salem operate over the same route in the opposite directions. We are here only concerned with M&I trains moving from Salem to Bismarck.

Prior to the installation of CTC between Nash and Chaffee, effective February 24, 1955, it was necessary for Frisco train dispatchers to issue train orders, messages, etc., to the telegraphers at Illmo for delivery to C&EI trains. Such handling is no different than the handling of the disputed train orders for the M&I trains in question.

In conclusion, the Carrier has shown that the claim on appeal to the Board has a procedural defect in that it is not the claim filed, progressed and handled on appeal on the property. The Carrier has shown that the territory involved from Thebes to Rockview is joint line territory and the cost of services performed by telegraphers at Illmo are pro rated in accordance with the actual work performed for each company which places such employes in the category of joint MOP-ST LSW employes. The Carrier has shown that the disputed work is not reserved exclusively to the telegraphers class or craft on this Carrier. The Carrier has also shown that there are no telegraphers employed at the point where the disputed trains enter upon the tracks of this Carrier and that there are no station, services or facilities at that point. Finally, the Carrier has shown that the arrangement placed in effect to handle the disputed train orders does not differ from practices at this point and other locations on the system.

The claim of the Organization as handled on the property has neither merit nor Agreement support and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Prior to July 31, 1961, westbound trains of the M&I, on its mainline, crossed the Mississippi River, between Flinton, Illinois and Ste. Genevieve, Missouri, by car ferry. On the aforementioned date M&I discontinued the car ferry. Thereafter, the trains turned south onto the track of Mopac at Flinton, Illinois, to Thebes, Illinois—turned westward to Rockview, Illinois over joint tracks of Mopac and the Cottonbelt crossing the Mississippi River over a bridge of the Southern Illinois and Missouri Bridge Company—at Rockview, entered and proceeded north on the tracks of the Frisco to Ste. Genevieve at which point the trains turned westward on the mainline of M&I.

This case is concerned only with the northward movement of M&I trains between Rockview and Ste. Genevieve over track of the Frisco.

Between the west side of the bridge and Rockview an operator is located at Illmo who is a joint employe of Mopac and the Cottonbelt. There is no evidence in the record that any employe relationship exists between this employe and M&I or Frisco. Nor is there any evidence of the arrangements by virtue of which the M&I uses the track of Mopac and the joint track of Mopac and the Cotton Belt.

A Frisco dispatcher is located at Chaffee, 1.8 miles south of Rockview. Movement of trains northward from Chaffee to Rockview to Nash is by signal indication (CTC): and from Nash to Ste. Genevieve by written train orders. The first Frisco telegrapher north of Nash is located at Cape Girardeau, a distance of 7.6 miles. Therefore, the M&I trains enter the Frisco tracks on signal indication but must proceed from Nash to Cape Girardeau on written train orders. Such train orders are transmitted by the Frisco dispatcher at Chaffee to the operator at Illmo for delivery to M&I trains.

Telegraphers aver that its Agreement with Frisco vests the covered employes of Frisco with the exclusive right to handle train orders governing the movement of trains on Frisco track. Further, and particularly, Telegraphers contend that the handling of train orders by the operator at Illmo, a stranger to

the Agreement, controlling the movement of M&I trains on Frisco track violates the Agreement. Thus, we are confronted with a Scope Rule issue.

The Scope Rule of the Agreement vests the covered employes with the exclusive right, excepting train dispatchers, "to handle train orders" on Frisco property.

We held in Award No. 5237:

"Work that is necessary for the Carrier to perform in the discharge of its duty as a common carrier or any work which it has responsibility to perform belongs to the class of employes who have contracted for it; and if the work is within the scope of its Agreement, the Carrier cannot contract with others for its performance . . .".

Placing the Scope Rule and our holding in Award No. 5237 side by side, we are compelled to the conclusion that the handling of train orders for movement of trains over Frisco track is exclusively reserved, with the exception of Frisco dispatchers, to Frisco telegraphers. Ergo, the complained of handling of such orders by the stranger operator at Illmo violates the Agreement.

In reaching our conclusion we have considered the various arguments advanced by Carrier concerning efficiency, practicality, practice and Awards pertaining to joint operations. Efficiency and practicality are not the concern of this Board—we are constrained to interpretation and application of the Agreement. Practice on the Frisco or other railroads is not relevant since the Scope Rule, excepting train dispatchers, vests Frisco telegraphers with the exclusive right to handle train orders controlling the movement of trains over Frisco track. We find no evidence of joint operation by Frisco and M&I or of joint operation by Frisco, Mopac and Cotton Belt. Insofar as the record shows M&I appears to enjoy the use of the track of other carriers from Flinton to Ste. Genevieve as a tenant and not a joint operator.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schultz
Executive Secretary

Dated at Chicago, Illinois, this 11th day of November, 1965.