

Award No. 14009
Docket No. TE-13862

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK CENTRAL RAILROAD COMPANY
(Eastern District, Boston & Albany Division)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central System (Boston and Albany Division), that:

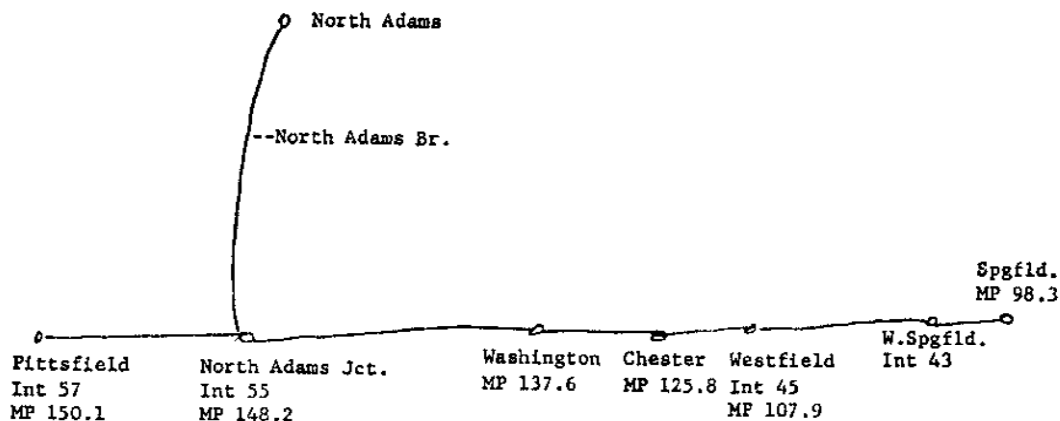
1. Carrier violated the Agreement, when on April 19, 1962, it caused, required or permitted Superintendent E. C. Cross, a company official, not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 100 at Washington, Massachusetts.

2. Carrier shall compensate M. Luicci, senior regular employee, Seniority District No. 8, on April 19, 1962, for one day (8 hours) at the rate of \$3.92 per hour rate of time and one-half account of M. Luicci rest day for the violation aforesaid.

EMPLOYEES' STATEMENT OF FACTS: Washington, Massachusetts, is on the Carrier's railroad between Springfield and Pittsfield, Massachusetts. Springfield, Massachusetts, is located at Mile Post 98.3; Washington is located at 137.6; and Pittsfield is located at Mile Post 150.1.

On this section of track Carrier has several towers which are numbered. Springfield is numbered 40, West Springfield is 42 and 43, Westfield 45, North Adams Junction 55, and Pittsfield 57, Int 55 is at Mile Post 148.2.

The following diagram will assist your Board in following the progress of the various trains as the situation unfolded on April 19, 1962:



able but not taken. The basis of the Organization's claim is wholly founded on hind-sight and not in accordance with the facts.

Carrier has shown that the agreement was not violated and that an emergency was created by an unforeseen engine failure of a through freight train on the Main Line of the Carrier. Under the circumstances, it was not improper for Carrier's Division Superintendent to have contacted the Train Dispatcher to obtain clearance for the passenger train. For Carrier to have waited for the claimant to perform the work in question would only have further delayed the movement of Train 405 and prevented Carrier's passengers from making connections at Albany. The claim should be denied as having no merit or agreement support.

(Exhibits not reproduced.)

OPINION OF BOARD: On April 19, 1962, a freight train, identified as BB-1, left West Springfield, Massachusetts, at 11:40 A. M., forty-five minutes ahead of passenger train No. 405. When No. 405 reached Washington, Massachusetts, it found BB-1 standing still on the westbound main track.

There is no telegrapher employed at Washington.

A Carrier Officer, Superintendent E. C. Cross, was riding train No. 405. He telephoned the train dispatcher, copied and delivered to the crew a train order which permitted No. 405 to get around the stalled BB-1 by use of the opposite main track from Washington to North Adams Junction.

Train BB-1 was stopped on the westward main track because of a broken air compressor pipe on one of the diesel locomotive units.

Rule 27 — Handling Train Orders — is the pertinent rule. Insofar as here material, it reads:

"(a) No employe other than covered by this Agreement and train dispatchers will be permitted to handle train orders except in cases of emergency.

* * * * *

(c) Emergencies as specified in the preceding paragraphs of this rule shall include only . . . engine failures . . ."

We find immaterial and irrelevant the arguments of Telegraphers, predicated on speculation and surmise. We look only to the facts, as they existed, to determine whether there was a *de facto* emergency within the prescriptions of Rule 27 (c).

The pivotal issue is whether train BB-1 was stopped because of "engine failure."

Telegraphers argue that "engine failure" is limited to failure of the power plant and the components through which energy is transmitted to the driving wheels. From this premise it reasons that the broken air compressor pipe was not an "engine failure"; ergo, not an emergency. To us, the words "engine failure" have a much broader meaning. We find that the words, given their usual and ordinary meaning, contemplate any malfunctioning or nonfunctioning within the housing of the locomotive which prevents its operation.

We find that: (1) the broken air compressor pipe on train BB-1 was an "engine failure" within the contemplation of those words as used in Rule 27 (c); (2) the "engine failure" created an emergency; and (3) the handling of the train order by Superintendent Cross, under the circumstances, was not a violation of the Agreement. We will deny the Claim.

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 amended June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1965.