

**Award No. 14428
Docket No. TE-11187**

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

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

**UNION PACIFIC RAILROAD COMPANY
(Eastern District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (Eastern District), that:

1. Carrier violated the agreement between the parties hereto, when on March 4, 5, 6, 7, 8, 11, 12 and 13, 1957, it opened block and train order station at Grantville, Kansas and failed and refused to assign employe covered by Telegraphers' Agreement to perform the work in connection with the operation of said station.

2. Carrier violated the agreement between the parties hereto, when on March 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29; April 1, 2, 3, 4, 1957, it opened block and train order station near Perry, Kansas and failed and refused to assign employe covered by the Telegraphers' Agreement to perform the work in connection with the operation of said station.

3. Carrier shall be required to compensate the following employes for 8 hours at the rate of \$2.038 per hour for each and every day of such violations as follows:

L. D. Andrews, March 4, 5, 6, 7, 8, 11, 12 and 13, 1957.

A. R. Mason, March 4, and 5, 1957.

M. W. Hauserman, March 6 and 7, 1957.

And in addition thereto, Carrier shall be required to compensate senior, idle, extra employe on seniority district No. 4 for eight hours at the rate of \$2.038 per hour for March 8, 11, 12, 13, 14, 15, 18,, 19, 20, 21, 22, 25, 26, and 27, 1957 when such services were performed by employes not covered by Telegraphers' Agreement and if no extra employes were idle on such day or days that senior, idle employe on said seniority district shall be compensated at time and one-half the foregoing rate for each day or days they were de-

prived of right to perform such work. (Names of employes entitled to such compensation to be determined by a joint check of Carrier's records.)

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement effective February 1, 1951, entered into by and between the Union Pacific Railroad Company (Eastern District), herein-after referred to as Carrier or Company, and The Order of Railroad Telegraphers, herein-after referred to as Employes or Telegraphers. The agreement is on file with this Division and is by reference made a part of this submission as though set out herein word for word.

The dispute submitted herein was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. Under the provisions of the Railway Labor Act, as amended, it is properly submitted to this Division for award.

Between Kansas City, Missouri and Topeka, Kansas, Carrier operates a double-track railroad. One track is normally used for east bound and the other for west bound traffic. Train movements with the current of traffic are governed by automatic block signals. Grantville and Perry, Kansas, the points involved herein, are located between Kansas City and Topeka. Perry is located 52 miles west of Kansas City and Grantville 61 miles west. It is, therefore, nine miles from Perry to Grantville.

Carrier officers scheduled work of spreading new ballast between Perry and Grantville to commence on March 4, 1957. During the time this work was being performed, it was necessary to take out of use for trains the track upon which the work was being performed. This resulted in making the operating of trains a single-track operation between Perry and Grantville during the time the maintenance work was being performed.

1. Local Chairman Bramlett of The Order of Railroad Telegraphers was advised of the proposed improvement which would necessitate "single-track operation" on the nine mile stretch of trackage, and on March 1, 1957 conferred with Chief Train Dispatcher Gresham relative establishment of positions of telephone and block operator at either end of the single-track portion. This was, of course, in regard to the establishment of a position at Perry and one at Grantville to handle the block operations which were necessary in the movement of trains in opposite direction across the single track area. This is a very busy piece of trackage due to the fact that not only Union Pacific trains operate between Topeka and Kansas City, but main line train of the Rock Island Railroad also use these same tracks.

2. Mr. Gresham stated that no telegraphers would be assigned to handle the block and telephone operator work, but due to the insistence of Mr. Bramlett that our agreement required the assignment of such operators, finally Mr. Gresham suggested that Mr. Bramlett confer with Superintendent Jopling. On March 2, 1957, Mr. Bramlett did confer with Superintendent Jopling in regard to the establishment of such positions during the period of spreading the ballast. Mr. Jopling agreed to the establishment of a position at Grantville (telephone and block operator) but stated that it would not be necessary to establish a position at Perry because the agent-telegrapher at that point could handle the block work.

3. It developed, however, as a matter of fact that the agent-telegrapher at Perry was not used to perform the work of telephone and block operator in

(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

(Exhibits not reproduced.)

OPINION OF BOARD: Between Kansas City and Topeka, Kansas Carrier operates a double-track system, one track for eastbound and one track for westbound traffic. Grantville and Perry, Kansas are intermediate points in this system 9 miles apart.

Carrier scheduled spreading new ballast between Perry and Grantville to commence on March 4, 1957. This resulted in taking out of use the track upon which the ballast work was being performed and making the operating of trains a single-track operation until completion of the work, a period extending from March 4, 1957 until April 4, 1957, inclusive.

Carrier scheduled Conductors at Grantville and Perry to function in a safety arrangement which was referred to by Carrier as a "human staff system." The Conductors controlled the movement of all trains on the 9 miles of single-track by communicating with the Train Dispatcher and with each other by means of telephones installed for the purpose. There are no allegations that any written records were kept by the Conductors.

On March 14, 1957, Telegrapher L. D. Andrews reported for duty at Grantville replacing one of the Conductors and operated that phone until the job was completed on April 4, 1957. Otherwise Conductors operated both phones at all times.

The Organization asserts that the Conductors functioned as telephone and block operators, that such work is reserved to Telegraphers by the Scope Rule of the Agreement and that the assignment of the Conductors to said work was a violation of the Agreement. This Board concurs. See Docket TE-14253, Award 14427, of this Board sustaining Awards 8263 (McCoy), 8264 (McCoy), 11722 (Rinehart), 11848 (Rose), 14107 (Hall). Claims (1) and (2) herein are thus sustained.

As to claims in claim (3) made in behalf of furloughed employes L. D. Andrews, A. R. Mason and M. W. Hauserman they are herewith sustained as presented. The position of the Organization is well taken that this was not emergency work and that these furloughed employes were not given sufficient

notice to be at work on the dates claimed when there was ample time available to give such notice. The Carrier may not now rely on unavailability when the record suggests that the Carrier's own acts or failure to act created such unavailability.

As to the portion of claim (3) on behalf of the senior idle extra employee, or, in the alternative, the senior idle employee on seniority district No. 4, Carrier contends, among other things, that such claim must be dismissed as void under the "unnamed claimant" disability. This Board has held in Docket SG-11977, Award 14424, and others that the Claimant need not be named if readily identifiable as described in the presented claim.

Carrier's personnel and/or payroll records will reveal with certainty if there was an idle extra employee covered by the subject agreement on the dates in question in claim (3). If there was no idle extra employee the same records will reveal which if any of said regular employees were idle on the days in question and their respective seniority. Claimant for each subject day is thus readily identifiable, if in fact he exists, from information in the hands of the Carrier.

One such qualified Claimant per day shall be paid at the pro-rata rate for any or all of the following days: March 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22 and 25, 1957. Claim is not allowed for March 26 and 27, 1957 because two Telegraphers, W. D. Sharp and L. D. Andrews, were paid for those days and no more than two claims per day could be recognized in this instance.

If Carrier's records reveal that no such qualified Claimant existed, i.e. there was no idle employee covered by the subject Agreement on a given day or days, then the claim for that day shall be dismissed as to the unnamed Claimant.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 violated.

That the Claims for L. D. Andrews, A. R. Mason and M. W. Hauserman shall be sustained at the pro-rata rate.

That the claim for the unnamed Claimant or Claimants for March 8, 11, 12, 13, 14, 15, 18, 19, 20, 21, 22 and 25, 1957 shall be sustained at the pro-rata rate upon identification or, failing identification, it shall be dismissed.

AWARD

Claims are sustained subject to the above qualifications.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of May 1966.

**CARRIER MEMBERS' DISSENT TO AWARD 14428,
DOCKET TE-11187 (Referee Rambo)**

The Carrier Members' dissent to Award 8263 is hereby adopted as the dissent in this case.

W. M. Roberts
G. L. Naylor
R. A. DeRossett
C. H. Manoogian