Award No. 14907
Docket No. TE-12540

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY (Coast Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway, that:

1. The Carrier violated the Agreement between the parties when, on May 20, 1959, it required or permitted an employe at Winslow, Arizona, not covered by said Agreement, to perform telegraphic communications work covered thereby; and

2. The Carrier shall now be required to pay R. E. Beydler the equivalent of a "call" at the established rate of his regularly assigned position.

EMPLOYES' STATEMENT OF FACTS: Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

At approximately 6:15 A. M., May 20, 1959, Conductor Boggan on Extra 223 West, at a location about four miles west of Winslow, contacted the Yardmaster at Winslow in connection with additional time against other trains. The Yardmaster immediately contacted the Train Dispatcher, who transmitted the following message, addressed to Extra 223 West, to the Yardmaster: "Go ahead and run to Canyon Diablo ahead of No. 7." The Yardmaster, an employe not covered by the Telegraphers' Agreement, then transmitted the message by use of the telephone (radio) to Conductor Boggan on Extra 223 West, approximately four miles west of Winslow.

The Organization's District Chairman filed claim, May 30, 1959 (Employes' Exhibit No. 1), with Carrier's Division Superintendent of Communications for a call payment in behalf of R. E. Beydler at Winslow. This dispute has been handled on the property as provided by the Agreement between the parties and in accordance with the Railway Labor Act, as amended.

Your Board has jurisdiction over the parties and the subject matter.

(Exhibits not reproduced.)

We are not claiming a monopoly right to the use of the radio; this claim concerns the work of handling telegraphic communications work. When radio-telephone is used to transmit or receive messages, orders and reports of record, naturally, this is our work.

Whether Extra 223 West was or was not still in the Winslow Yard when the violation occurred is not in point for the reason that the Yardmaster at Winslow handled telegraphic communications work.

This is to advise you that your decision is unsatisfactory, and will be appropriately appealed.

Yours truly,

/s/ D. A. Bobo
General Chairman"

OPINION OF BOARD: On May 20, 1959 at 6:00 A. M., a train and engine crew reported for duty at Winslow, Arizona to man Extra 223 West, a westbound freight train. The operator on duty (Claimant Beydler) gave the crew a clearance card and the following message (which he had received from the Train Dispatcher at 5:31 A. M.):

"Clear No. 7 Eng. 56 — 30 mins late Dennison to Cosnino 20 mins late from Cosnino. Extra 223 West due to leave Winslow on block of No. 7 must not be delayed."

What happened thereafter is a matter of dispute. The Organization asserts that at 6:15 A. M., when Extra 223 West was four miles west of Winslow, Conductor W. W. Boggan called the Winslow Yardmaster, using the radio, and asked if he could obtain more time in addition to that which he already had been given when he was cleared as Winslow. The Yardmaster, according to the Organization, came in on the Dispatcher phone and requested additional time for the Extra. The Yardmaster then contacted the Conductor (by radio), it is further alleged, and reported that the Dispatcher said to "go ahead and run to Canyon Diablo ahead of No. 7."

The Carrier acknowledges that, had the Dispatcher desired to give Extra 223 West additional time on Train No. 7, he would have communicated that information to the Conductor through an Operator, not through the Yardmaster, However, it says, no such thing happened. What really occurred, Carrier asserts, is that at about 6:13 A. M., just before the Dispatcher lined the westbound leading-out switch and cleared the signal for departure of Extra 223 West (which was still in the Yard), the Conductor called the Yardmaster (by radio) and inquired about the whereabouts of Train No. 7. The Yardmaster stated that Train No. 7 was still at the passenger station and was not made up ready to depart at that time. Carrier denies that the Extra 223 West Conductor asked for or received any additional time on Train No. 7. The freight train departed Winslow at 6:15 A. M., according to Carrier, and traveled 142.5 miles west to Seligman, ahead of Train No. 7.

It cannot be inferred from the mere fact that the Conductor and the Yardmaster had some discussion, that a communication was transmitted without which the freight train could not move (e.g., that a message of record was transmitted). As noted, this train already had authority to

proceed. If Carrier's facts are correct, it would appear that Conductor Boggan was simply assuring himself that Train No. 7 was not in the way.

There is some reason to believe, moreover, that Carrier's report of the incident is accurate. In his July 3, 1959 reply to the Organization's May 30 claim, Communications Superintendent Crouch stated:

> "This matter was referred to Superintendent Hammit for investigation, and he advises that Trainmaster Rowland discussed this incident with both Conductor Boggan and trick Yardmaster G. D. Mitchell, and he was informed by Conductor Boggan that he did not ask the Yardmaster for more time. He merely inquired as to location of Train No. 7, and Yardmaster Mitchell informed him that Train No. 7 was still at the station in Winslow and was not made up at that time. Conductor Boggan further informed Mr. Rowland that he had a Form 934 message to clear No. 7 at Canyon Diablo, but since he had a light train and with five units he was able to go to Seligman ahead of Train No. 7."

While the Organization did not accept this as an accurate report, it failed to present evidence which would either disprove its accuracy or prove the correctness of its own contentions. Consequently, there is no basis for sustaining 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 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 Organization has not submitted evidence which substantiates its claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1966.

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