

Award No. 16079

Docket No. TE-14789

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Nathan Engelstein, Referee

**PARTIES TO DISPUTE:**

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

**CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Burlington and Quincy Railroad, that:

1. Carrier violated the Agreement between the parties when on February 12, 13, 14, 19, 22, 23, 27, March 1, 2, 6, 8, 9, 12, 25, 26, 30, April 4, 19, 24, 25, May 1, 8, 15, 31 and June 4, 1963 it permitted employes not covered by said Agreement to copy messages diverting cars in yard at Des Moines, Iowa.

2. Carrier shall compensate G. M. Armstrong, Operator, Des Moines, Iowa, in the amount of a two-hour call payment at the time and one-half rate for each date mentioned above.

**EMPLOYEES' STATEMENT OF FACTS:** The Agreement between the parties effective May 1, 1953, as amended and supplemented is available to your Board and by this reference is made a part hereof.

Des Moines, Iowa is a station on the Ottumwa Division of this Carrier's lines. At the time cause for this claim arose there was one position of operator under the Agreement at Des Moines with assigned hours from 8:00 A. M. to 5:00 P. M. (one hour meal period). The second shift operator position was discontinued August 24, 1962. Shortly after the discontinuance of the second shift operator position, the remaining operator was instructed to leave the printer machine (teletype) turned on when he went off duty in order that the relay office at Ottumwa could transmit to Des Moines during the time the operator was off duty. The telegraph office is in the same building with other offices and the desks of some employes are in the same room. Messages were and are transmitted by Ottumwa between 5:00 P. M. and 8:00 A. M. into the printer machine at Des Moines. The accumulated messages were supposed to be handled by the operator after he came on duty. Instead, clerical forces checked the messages on the printer machine and recorded the information contained in the messages diverting cars, as follows:

The above messages are filed in the Carrier's records to be preserved for several years. The information and instructions contained therein were recorded by the diversion clerks on the waybills of the cars involved.

Claims were filed and handled in four separate proceedings, each covering a group of dates. Conference was held on the first two groups June 7, 1963, and on the remainder on August 20, 1963. All claims were handled in the usual manner up to and including the highest designated officer of the Carrier and have been declined. Rather than burden the record, Employees attach only the correspondence in the first proceedings to reflect this handling on the property as ORT Exhibits 1 through 6. This is typical of the handling of the other three proceedings.

(Exhibits not reproduced.)

**CARRIER'S STATEMENT OF FACTS:** Claimant is the regularly assigned operator at Des Moines, Iowa, working from 8:00 A. M. to 5:00 P. M., with one hour for meals, Monday through Friday. The Des Moines telegraph office has been in existence since prior to the year 1907. Throughout its more than 50 years of existence, the Des Moines office has never been a 24-hour office, that is to say, telegraph operators have never been assigned around-the-clock at Des Moines.

Teletype machines, both sending and receiving were first installed in the Des Moines office in October 1940. Ever since that date, or more than 23 years, the receiving machine has been left in the "on" position when no operator was on duty. When the operator does come on duty, he handles whatever messages are on the machine, distributing them to those addressed either in person, through messenger service or by telephone. There has been no change in this handling since 1940.

The instant claim alleges that someone other than an employee covered by the telegraphers' agreement "copied message diverting cars. . . ." During the handling of the claim on the property, Carrier requested the Union to advise who allegedly "copied message" referred to, but to the date of this writing the Union has steadfastly refused to comply with this request, for the obvious reason that such allegations are completely unsupported.

The schedule of rules agreement between the parties effective May 1, 1953 is by reference made a part of this submission.

**OPINION OF BOARD:** On August 24, 1962, Carrier discontinued the second shift operator position at its station at Des Moines, Iowa, on the Ottumwa Division. The remaining operator was instructed to leave the teletype or printer machine on when he went off duty so that the machine would record incoming messages.

The Order of Railroad Telegraphers maintains that Carrier violated the Agreement when clerical forces not covered by the Telegraphers' Agreement were permitted to check the messages on the printer machine and record the information concerning the diverting of cars on the dates specified in the claim. It takes the position that the work of transmitting and/or receiving messages by use of printer machines is work that accrues to employees under the Telegraphers' Agreement. It asserts that prior to the change in 1962 when instructions were issued to leave the machine turned on, operators subject to the Telegraphers' Agreement handled all messages on the teletype, and the machine was turned off when the operator was not on duty. It contends that

this was a change in the manner of handling train messages in violation of Rule 1 (b) of the Agreement.

Carrier denies that there was a change in the method of handling the messages at Des Moines. It states that since 1940 when the teletype machines were installed in the Des Moines office, the receiving machine has been left in the on position when no operator was on duty. It also asserts that Carrier did not permit employes other than those covered by the Telegraphers' Agreement to copy messages diverting cars and that it was not a violation of the Agreement for anyone to read a message before it was torn off the machine.

The central question to be determined is whether there was a change in the procedure for handling messages in violation of Rule 1 (b).

Rule 1 (b) reads as follows:

"Improvements or changes in the manner of handling train orders or communications of record shall not operate to take that work out from under this agreement."

The record establishes that prior to the discontinuing of the second shift operator the teletype machine was on when the operator was on duty. He tore the communications from the teletype machine and distributed them to the persons addressed through messenger service or by telephone. After the elimination of the second shift operator the machine was left on when the operator was off duty. Although Carrier asserts that there is no showing that messages for the diverting of cars were received by other employes the fact remains that this diverting data was acted upon when an operator was not present. Furthermore, on the property when Petitioner pointed out that a change in the manner of handling communications was instituted when the machine was left on without an operator on duty, Carrier did not deny that this action constituted a change. Inasmuch as there was a change at Des Moines in the manner of handling communications and this change resulted in others outside of the Agreement handling the messages we find that Rule 1 (b) was violated. The Claim in behalf of operator G. M. Armstrong is therefore sustained.

**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 violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 1st day of February 1968.

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