



Award No. 16483

Docket No. TE-15614

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers) on the Missouri Pacific Railroad-Gulf District, that:

1. Carrier violated the Scope Rule 1 of the Telegraphers' Agreement in requiring and instructing Conductor R. R. Green, Train No. 8, while at AF Siding, a point on Austin Subdivision without regular telegraph or train order service, to copy and deliver a train order for his train on February 18, 1964.

2. Carrier shall compensate the oldest extra telegrapher in service who was idle on that day and if none, will allow the regular assigned Telegrapher at Austin, Texas who was idle on rest day 8 hours' pay at \$2.5829 per hour, or, \$20.68.

EMPLOYEES' STATEMENT OF FACTS: AF Siding is located 8.2 miles southwest of Austin, Texas, on the Palestine Division of the Missouri Pacific Railroad-Gulf District. There are no communication facilities located at this point other than a phone booth at each end of the passing track.

At 10:30 P. M. on the date in question, Conductor R. R. Green came in on the Dispatcher's telephone and copied and delivered Train Order No. 318 to Train No. 8, a passenger train. The train order read as follows:

"ORDER NO. 318

TO C&E NO. 8, AT A F SIDING.

ORDER NO. 316 IS ANNULLED

SIG. R. P. B.

DISPR.

COMPLETE 10:36 P. M."

Claim was made for the oldest extra Telegrapher in service who was idle on that day. He should be allowed a day's pay.

Claim was appealed to the highest officer and declined by him. The claim is now properly before your Board for final adjudication.

CARRIER'S STATEMENT OF FACTS:

1. This dispute involves the application of the Agreement between the Missouri Pacific Railroad Company and The Order of Railroad Telegraphers (Gulf District), effective March 1, 1952, copy of which is on file with your Board and by reference herein made a part of Carrier's submission.

2. On February 18, 1964, No. 8, a northbound passenger train, had Order No. 316 instructing it to meet Extra 883 South at AF Siding, a point approximately nine miles south of Austin, Texas. No. 8 is scheduled by timetable to pass AF Siding, a blind siding, where there is no telegraph service, at 9:47 P. M.

3. Extra 883 South left Taylor, Texas, a point 43 miles north of AF Siding, at 8:00 P. M. At approximately 8:45 P. M., while Extra 883 South was at McNeil, a point 22 miles south of Taylor, the air went into emergency and upon inspection of the train it was found that a draw bar had been pulled out of one of the cars. Because of the draw bar failure Extra 883 South was delayed at McNeil for one hour and fifteen minutes and did not arrive at Austin, nine miles north of AF Siding, the meeting point, until 10:25 P. M. In the interim, it had become apparent that the crew of Extra 883 South, who was being aggregated out of Taylor, would be unable, because of the emergency at McNeil, to take Extra 883 South beyond Austin; and a messenger was sent from Austin to AF Siding to instruct the conductor of No. 8, R. R. Green, to contact the dispatcher. When Conductor Green contacted the dispatcher at 10:30 P. M., Order No. 318 was issued, annulling Order No. 316, which permitted No. 8 to proceed north from AF Siding.

4. Under date of March 22, 1964, the District Chairman initiated a claim for eight hours' pay on behalf of the "oldest extra telegrapher" or a "regular man on rest day," whoever or wherever he may be, based on the contention that the Telegraphers' Agreement, Rule 1, prohibited train or enginemen from copying train orders.

5. In denying the claim the Superintendent took exception to the claim on behalf of an employe who was not identified, and advised the District Chairman of the emergency condition that existed and called attention to the fact that under Rule 2 (c) train and enginemen may copy train orders in such circumstances.

6. In appealing the claim through channels on the property, the General Chairman, as a Monday morning quarterback so to speak, took the position that there was no emergency condition but rather lack of foresight on the part of the dispatcher. Then in appealing to the Director of Labor Relations in a letter dated June 2, 1964, four months after the incident, explained just how the dispatcher could have avoided issuing the train order in question at AF Siding. The fact that Extra 883 South experienced a drawbar failure is not in dispute. Final decision of the Carrier by the Director of Labor Relations is attached hereto as Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: The material facts are not in dispute.

On February 18, 1964, Carrier's northbound passenger train No. 8, had an order to meet Extra 883 South at AF Siding, which is located approximately

9 miles south of Austin, Texas. According to timetable schedule, No. 8 would and/or should pass AF Siding at 9:47 P. M. AF Siding is a blind siding with no telegraph service at 9:47 P. M.

Extra 883 South, left Taylor, Texas, which is approximately 43 miles north of AF Siding, at 8:00 P. M. At approximately 8:45 P. M., while Extra 883 South was at McNeil, which is approximately 22 miles south of Taylor, it was delayed by reason of a draw bar failure for about 1 hour and 15 minutes. Extra 883 South did not arrive at Austin, which is approximately 9 miles north of AF Siding, the meeting point with train No. 8, until 10:25 P. M.

The Carrier contends that because of the emergency situation that existed at McNeil, the crew of Extra 883 South would be unable to take that train beyond Austin, and for that reason a messenger was sent from Austin to AF Siding with instructions to the Conductor of No. 8 to contact the Dispatcher. When the Dispatcher was contacted by the Conductor of No. 8, the Dispatcher issued a new order, annulling the old order, which permitted No. 8 to proceed north from AF Siding, without waiting for the delayed Extra 883 South.

The Organization, on the other hand, denies that any emergency existed. It does not deny that Extra 883 South was delayed at McNeil by a draw bar failure, but contends that the Dispatcher knew and/or should have known as early as 9:15 P. M. what the situation was with reference to Extra 883 South while at McNeil. It also contends that at or about the hour of 9:15 P. M. train No. 8 was proceeding northward in the vicinity of New Braunfels and that a telegraph office, MKT Junction, located about 18.5 miles north of New Braunfels, was opened and manned by a telegrapher at the time and that the Carrier could have used the telegrapher at MKT Junction to handle the train order, but did not do so. It also contends that the Dispatcher could have and/or should have anticipated the delay to Extra 883 South, before No. 8 passed the open telegraph office at MKT Junction.

An examination of the record discloses that the Organization, in its original Statement of Claim, bases its claim on a violation of Rule 1, the Scope Rule. However, when this matter was being progressed on the property, it also claimed a violation of Rule 2, Handling Train Orders, etc.

It would serve no useful purpose to go into great detail as to the applicability of Rule 1-Scope. This rule has been before this Board on any number of occasions. We have held that this rule does not purport to specify or describe the work encompassed within the terms of the rule but that it only sets forth the class of positions to which it applies.

The claim before us involves the copying of a train order covered by a specific rule, to wit, Rule 2. Rule 2 reads as follows:

"RULE 2.

HANDLING TRAIN ORDERS, ETC.

(a) Only in the event of accident or similar emergency will an employe other than covered by this agreement be permitted to receive train orders at telegraph or telephone offices where an operator is employed. If operator is available he will be paid for a call.

(b) If instructed by train dispatcher, or other authority, to clear train or trains before going off duty, leaving clearance cards or orders

in some specified place for those to whom addressed, employees shall be paid under the provisions of the call and overtime rule.

(c) Train dispatchers will not be required nor permitted to transmit train orders or handle block by telephone or telegraph to train and engine service employees, except in emergency; nor will train and engine service employees be required or permitted to take train orders or to block, or report, trains by telephone or telegraph, except in emergency. Emergency is defined as follows:

Casualty or accident, engine failure, wreck, obstructions on track through collision, failure to block signals, washouts, tornadoes, slides or unusual delay due to hot box or break-in-two that could not have been anticipated by dispatcher when train was at previous telegraph office, which would result in serious delay to traffic.

(d) When orders and/or clearance cards are copied at one point and sent for delivery to a train at a point, where telegraph or telephone service is maintained, the employee at such point will be paid for a call."

The only provisions of Rule 2 with which we are concerned are paragraphs (a) and (c).

The meaning of paragraph (a) of Rule 2 seems to us to be very clear and unambiguous. It applies only to those situations and to those points where a telegrapher is employed and is available and a train order is copied by one other than the telegrapher. AF Siding, where train No. 8 and train Extra 883 South were to meet, is a blind siding point where no telegrapher is employed.

Paragraph (c) of Rule 2 sets forth what the Carrier may and may not do in an emergency situation.

The question that presents itself and to be determined by this Board is:

Whether or not, in view of the situation that existed at the time in question, did an emergency exist, as claimed by the Carrier.

The parties, in Rule 2 — paragraph (c), have defined those incidents that constitute an emergency, as follows:

"... Emergency is defined as follows:

... or break-in-two that could not have been anticipated by dispatcher when train was at previous telegraph office, which would result in serious delay to traffic.

The Organization does not deny that Extra 883 South was delayed at McNeil by a draw bar failure for a period of time, but contends that the Dispatcher could have and/or should have contacted the telegraph office at MKT Junction and used the services of the telegrapher there to handle the order instead of sending a messenger to AF Siding to request the Conductor of No. 8 to contact the Dispatcher.

In Award 12777 (Hamilton) we said:

"Emergencies do not always appear as black or white. CERTAINLY HINDSIGHT ALLOWS ONE TO BE MORE PERCEPTIVE THAN

HE IS AT THE TIME OF THE SPECIFIC OCCURRENCE. However, we should allow certain latitude in judgment, for a person making a quick decision when faced with a situation which appears to him, at the time, to be an emergency."

A careful search of the record reveals nothing of a probative value to support the contentions of the Organization that no emergency existed. Mere assertions, conclusions, speculations and surmises without proof is not enough to establish convincing evidence that the Agreement was violated. Nor can we subscribe to the argument of the Organization that the Dispatcher should have or could have issued the order through the telegrapher at MKT Junction. It would be difficult to believe that the Dispatcher could anticipate, project and/or foresee the actual conditions that prevailed to competently issue the order for train No. 8.

We find that the broken draw bar, and the situation and condition that was caused to exist by reason thereof, was an emergency within the contemplation of the words used in paragraph (c) of Rule 2 which refer to "unusual delay due to . . . break-in-two." We find that the handling of the train order, under the circumstances, was not a violation of the Agreement.

The Organization further contends that the emergency involved only Extra 888 South and did not involve Train No. 8. We do not agree with such contention. The wording of paragraph (c) of Rule 2 specifically refers to acts or situations "which would result in serious delay to traffic."

We interpret that language to mean that the emergency rule applies not only to the train involved but to all other trains which may be or are affected by the emergency conditions.

See Award 13729 (Mesigh).

In view of our finding that an emergency did exist and that there was no violation of the Agreement by the Carrier, the other aspects of the dispute need not be considered.

The claim will be denied.

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 approved June 21, 1934;

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

That the Agreement was not violated.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of July 1968.

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