



Award No. 17233

Docket No. TE-16320

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(SUPPLEMENTAL)**

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
CHICAGO GREAT WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Chicago Great Western Railway, that:

1. Carrier violated and continues to violate the Agreement between the parties when commencing on (or before) September 9, 1964, it required and continues to require the second shift Telegrapher-Clerk at Clarion, Iowa, to "clear" trains and leave train orders, clearance cards, messages, etc., on the train register to be picked up by members of train crews at a time no telegrapher is on duty.

2. Carrier shall compensate F. J. Mentzer, Telegrapher-Clerk at Clarion, Iowa for a call each date, September 9, 16, 23 and 30, 1964. Carrier shall compensate D. L. Wigfield, Telegrapher-Clerk (relief) at Clarion, Iowa for a call each date, September 14, 21 and 28, 1964.

3. On dates subsequent to September 30, 1964, Carrier shall compensate the occupant of the second shift Telegrapher-Clerk position at Clarion, Iowa for a call on each date that he is required to "clear" trains and leave train orders, clearance cards, messages, etc., on the train register to be picked up by members of train crews at times no telegrapher is on duty at Clarion.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties effective June 1, 1948 (reprinted May 1, 1958), as amended and supplemented, is available to your Board and by this reference is made a part hereof.

Clarion, Iowa, is located on the Minnesota Division of the railroad and is the terminus of three separate Districts. Clarion and westward is the Council Bluffs District which terminates at Council Bluffs, Iowa; Clarion northward is the Mason City District which terminates at Hayfield, Minnesota; and Clarion eastward is the Clarion District which terminates at Oelwein, Iowa. Train and engine crews headquarter at Clarion. All train crews commence their tours of duty at Clarion. Conductors at start of tour of duty report at the train order office located in the tower at Clarion for their train orders and other instructions.

There are two Telegrapher-Clerk positions at Clarion. Both are seven day positions, with the rest day relief on both positions furnished by the

Circumstances of this dispute, insofar as named claimants for specified dates in Parts 1 and 2 of claim are concerned, are substantially the same as for named claimants and specified dates involved in Case No. 1 pending adjudication in Third Division Docket No. TE-12955, which by reference thereto is made a part hereof as if fully set forth herein.

Part 3 of the instant claim involves not only unnamed claimants and unspecified dates subsequent to September 30, 1964, but includes "messages, etc." as well as "train orders, clearance cards" left "on the train register to be picked up by members of train crews at times no telegrapher is on duty at Clarion."

Carrier does not deny that on dates specified in Parts 1 and 2 of the instant claim the second trick telegrapher-clerk may have left "train orders, clearance cards" on the train register prior to time scheduled off duty, but there is no evidence that same were "picked up by those addressed at times no Telegrapher-Clerk is on duty at Clarion."

Attached as Carrier's Exhibit "F" is copy of letter dated April 27, 1966, addressed to Carrier's Vice President-Personnel by the General Chairman which was received by the Carrier on April 29, 1966, the very same date the Employees served notice on the Third Division of intention to file the instant claim in ex parte with the National Railroad Adjustment Board.

Attached to Carrier's Exhibit "F" was a list of some 125 dates subsequent to September 30, 1964, on which the Employees allege that "train orders, clearance cards, messages, etc." were left "on the train register to be picked up by members of train crews at times no telegrapher is on duty at Clarion." On 14 of the 125 dates listed the only information given in addition to the date are the words "East Local," "Local East" or "Extra Local East"—not even the name of claimant is shown. On the remainder of 111 dates, the only additional information given is the name of claimant, locomotive number, train order numbers and time cleared. Trains are alleged to have been cleared at times varying between 10:48 P.M. (six hours and two minutes before claimant was scheduled to go off duty) to 6:46 A.M. (2 hours, 46 minutes after claimant was scheduled to go off duty)—no explanation given concerning how train was cleared with no telegrapher on duty (obviously telegrapher was on duty at the time). On a great preponderance of the dates listed trains were cleared some one and one-half hours or more before claimant was scheduled to go off duty. There is no evidence that claimants were not on duty at time train orders and clearance cards are alleged to have been picked up by members of train crews. Even the time for which a train is called is not probative evidence of time train crews actually report for duty and it is common practice for members of train crews (particularly the conductor) to report for duty considerably in advance of time for which called in order to read and study train orders, waybills, consist of train, etc.

(Exhibits not reproduced.)

OPINION OF BOARD: In this dispute, it is the Organizations's contention that Carrier violated the Agreement when it required the second shift telegrapher-clerk at Clarion, Iowa to clear trains and leave train orders, clearances, messages, etc. on the train register, to be delivered at a time when a telegrapher-clerk is not on duty. In this instance a telegrapher-clerk is not on duty between 5:00 A.M. and 1:00 P.M.

The issue herein is similar to the issue between these same parties herein in Award No. 14764 (Devine), and this Board held:

"This issue, under like facts, has been repeatedly considered and the employees' position sustained.

See Awards 1166, 1169, 1170, 1422, 1680, 1879, 2928, 3611, 3612, 4057, 5013, 8657, 9319, 10239, 11653, 11788, 11807, 11822, 12240, 12967, 13152, 13160, 13343, 13712, 13713, 13870, 14307."

In regard to damages, the Carrier alleges that this is not a continuing claim and therefore part (3) of the claim should be denied.

We agree that this is not a continuing claim, however, the issue remains in regard to damages, as to whether or not we should sustain the claim as to the list of dates of violations submitted by the Organization together with its letter of April 27, 1966 addressed to Mr. D. K. Lawson, Vice-President, Personnel for Carrier.

Carrier holds that inasmuch as said list was not received by Carrier until it received a notice of submission of this claim to this Board, then it was not raised on the property and thus cannot be considered by this Board in determining said question of damages.

A close review of the record shows that Carrier repeatedly alleged throughout the entire handling on the property that the claim for call allowance subsequent to September 30, 1964 is improper due to unnamed claimants and dates of violations by Carrier in this instance.

This Board strictly adheres to the rule clearly and repeatedly applied by this Board in the past that contentions or charges not raised during the handling on the property cannot be considered by this Board in the determination of a dispute.

It is our conclusion that the Organization belatedly submitted the list of the dates of the violations that occurred after September 30, 1964, and therefore part (3) of this claim must 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 violated to the extent expressed in Opinion.

A W A R D

Claim (1) sustained.

Claim (2) sustained.

Claim (3) denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 25th day of June 1969.