



Award Number 17486

Docket Number TE-15150

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

G. Dan Rambo, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pennsylvania Railroad that Carrier violated the provisions of the Telegraphers' Agreement on December 6, 1961 by permitting Engineer Faith on Extra 9872 North, an employee not covered by the Telegraphers' Agreement, to copy Train Order No. 24 at closed Block Station Speed. Claimant J. E. Freeman was available and is entitled to be compensated one call at his regular rate.

EMPLOYEES' STATEMENT OF FACTS: Claimant is the regularly assigned Agent-Operator at Speed, Indiana, with assigned hours 9:00 A.M. to 5:00 P.M. and rest days of Saturday and Sunday. Speed, Indiana, is located on Carrier's Louisville branch between Louisville, Kentucky, and Indianapolis, Indiana. It is a one-man agency and block station, shown in Carrier's time-table as a block station "in service part-time".

Speed, Indiana, is located 98.3 miles south of Indianapolis, Boyd 104.9 miles south and Louisville 111.2 miles south of Indianapolis.

On Wednesday, December 6, 1961, Train Order No. 24 was issued to C&E Extra 9872 North, addressed to them at Speed, Indiana, and copied by the block operator on duty at Boyd, Indiana. He, in turn, transmitted the order to Speed, where it was copied by Engineer Faith of the train to which it addressed. Order was made complete at 7:26 P.M., outside the assigned hours of Claimant.

The parties engaged in an arbitration proceeding to resolve a dispute over rules, which was designated "Arbitration Case No. 153, National Mediation Board Case No. A-3521." On December 12, 1951, the Arbitration Board awarded the following rule binding the parties, to become effective February 15, 1952:

"Except in emergencies, Train and Engine Service Employees shall not be required to copy train orders at points where, and during the hours when Block or Telegraph or Telephone Operators are scheduled to be on duty, or at block stations which have been closed or abolished since May 1, 1938, or at block limit stations which have been established since May 1, 1938, or which may hereafter be established.

- (1) The emergencies referred to shall include only storms, washouts, tornadoes, obstructions to tracks, slides, accidents, casualties, wrecks, engine or equipment failures, hot boxes, or break-in-two's,

south end of Speed siding, a point located approximately 1 1/2 miles south of the then closed Speed Block Station.

Block or Telegraph or Telephone Operators have never been scheduled to be on duty at the switch at the south end of Speed siding, and there is not now nor has there ever been, either prior or subsequent to May 1, 1938, a block station or block limit station at that point.

Under date of January 1, 1962, the Local Chairman, Order of Railroad Telegraphers, presented a claim to the Supervising Operator in substantially the same form as that quoted at the beginning of this Submission. The Supervising Operator denied the claim in a letter dated January 3, 1962. A copy of the Supervising Operator's letter of January 3, 1962, is attached as Carrier's Exhibit "D".

Under date of January 20, 1962, the Local Chairman presented the claim to the Superintendent, Personnel, Southwestern Region. Claim was discussed at meeting held on February 14, 1962, and by letter dated February 20, 1962, the Superintendent, Personnel, denied the claim, pointing out that:

"The point at which this Train Order was copied has never been a Block Station as contemplated in Arbitration Award 153 and train and engine service employees may be properly required to copy train orders at this point"

The Local Chairman subsequently requested that a Joint Submission be prepared for the purpose of progressing the claim to the Manager, Labor Relations, and the General Chairman. A copy of this Joint Submission is attached as Exhibit "E".

By letter dated March 9, 1962, the General Chairman listed the claim for discussion with the Manager, Labor Relations, the highest officer of the Carrier designated to handle such disputes on the property. At that time the Joint Submission had not been received from the Local Chairman and Superintendent, Personnel, and the Manager, Labor Relations, and General Chairman, therefore, agreed to extend the time limits provided by Article V of the August 21, 1954 Agreement until sixty days from the date of the meeting at which the case would be discussed following receipt of the Joint Submission. This meeting took place on September 5, 1963, and the Manager, Labor Relations, denied the claim by letter of October 30, 1963. A copy of this letter is attached as Carrier's Exhibit "F".

Thus so, far as the Carrier is able to determine, the question to be decided by your Honorable Board, should it disregard the Carrier's supported argument that it has no jurisdiction over this dispute, is whether the Carrier can properly require engine and train service employees to copy train orders at a point at which there has never been a block station or a block limit station.

(Exhibits not reproduced)

OPINION OF BOARD: Claim arose when a person not covered by the Agreement copied a train order received by telephone at the south end of the Speed siding one and a half miles south of the closed Speed Block Station. Carrier argues that since the act was performed over a mile away from the location of the station the Agreement prohibition does not apply. Employees respond that it took place within the Speed block and as such was within the limits contemplated by the Agreement.

This same issue involving the same parties has been before this Board on several occasions and this Board has persuaded by Awards 13314, 14269, 14270, 14271 and 16156, all of which sustain the position of the Organization.

It has been urged on behalf of Claimant that a violation of Article V was committed when Carrier's representative declined the claim on the property, giving as his reason, "there was no violation of the Agreement". Such cannot be sustained although the statement is hardly informative of anything.

Article V requires notice in writing of the reasons for disallowance and one of the several definitions of "reasons" given by Webster is, "a rational ground or motive". Thus, any rational reason will suffice.

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.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1969.

CARRIER MEMBERS' DISSENT TO AWARD 17486, DOCKET TE-15150

We dissent for the reasons set forth in detail in Carrier Members' Dissent to Award 13314 (Hamilton) involving a similar dispute between these same parties.

/s/ G. C. WHITE
G. C. White

/s/ R. E. BLACK
R. E. Black

/s/ P. C. CARTER
P. C. Carter

/s/ W. B. JONES
W. B. Jones

/s/ G. L. NAYLOR
G. L. Naylor