



Award Number 17518

Docket Number TE-16471

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
THE PENNSYLVANIA RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Pennsylvania Railroad, that:

1. Carrier violated the Telegraphers' Agreement when the Train Dispatcher on duty on March 23, 1963, asked an employe at an open block station of a foreign railroad, the Erie Railroad, and not covered by the Telegraphers' Agreement, to O.S. (report by) a train by a closed P.R.R. block station (AD), located adjacent to the Erie Tower. This Erie Tower is called Tower X.
2. Claim is hereby made that Extra Operator G. G. McIsaac be allowed eight hours' pay pro rata for March 23, 1963, account not called to perform this service; violation of the Scope Rule of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: Claimant, on the date involved here, was an extra Group 2 block operator. "AD" block station is located in the city of Olean, New York. An Erie-Lackawanna Railroad tower, known as "X," is located nearby.

"AD" block station was open 6:00 A.M. until 10:00 P.M. Monday through Friday of each week, closed on Saturdays and Sundays.

The work in dispute occurred at approximately 10:49 A.M., Saturday, March 23, 1963, while "AD" block station was closed.

Copy of the Agreement between the parties effective September 1, 1949, as amended and supplemented, is on file with your Board and by this reference is made a part of this submission.

On March 31, 1963, the District Chairman initially filed claim, the substance of which is included as the Statement of Claim herein. The claim was denied April 4, 1963 and appealed in the usual manner.

Other facts are revealed in the initial correspondence exchanged by the parties during the handling of this dispute, copies of which correspondence are reproduced and included herewith as the next following pages:

the information on via telephone, to the P.R.R. Train Dispatcher, for the benefit of the latter.

The P.R.R. Operator made no record of the time BNY-16 crossed over the Erie main track and he did not 'OS' that train on his train sheet until it had cleared his Block Station at 'WH'.

* * * * *

The numerous N.R.A.B. Awards which you cited in our discussion for the reason that they involved, as you stated, 'OS'ing of trains, are not controlling over the issues involved herein. As we pointed out above, 'OS'ing did not occur and was not involved in the circumstances which resulted in the instant claim."

Therefore, so far as the Carrier is able to anticipate the basis of the Employees' claim, the questions to be decided by your Board are whether the mere furnishing of information by the Erie Block Operator did or did not constitute "OS"ing a train, whether any violation of the Scope Rule of the applicable Schedule Agreement, the only rule relied on by the Employees during the handling of the dispute on the property, occurred and whether the Claimant is entitled to the compensation claimed.

(Exhibits not reproduced)

OPINION OF BOARD: The alleged violation in the instant dispute occurred in the following context "AD" Block Station is located at a point where Erie's tracks cross the Carrier's main line. This station is closed on Saturday and Sunday. Erie's "X" Interlocking, at that point, controls the signals governing Carrier's trains. "WH" Block Station is located approximately eight miles south of "AD".

On Saturday, May 23, 1963, Carrier's train dispatcher at Buffalo—seventy-seven miles distant—telephoned the "WH" Block Operator and requested him to call the Erie Block Operator at "X", to determine the location of Train BNY-16. This information was obtained—to the effect that Train BNY-16 had passed over the crossing with Erie—and communicated to the Buffalo train dispatcher.

Thereafter, the Organization filed the instant claim, contending that an Erie employee had "OS'd" a train.

Thus, the issue presented for our determination is whether the facts indicate that an O S had occurred. In order to do so, we are required to analyze what is understood by an O S.

In this regard, the Carrier sets forth the necessary elements, as follows:

1. The determination of the exact time a particular train passes a particular point.
2. The recording of such exact time by a Block Operator on his Station Record of Train Movement form.
3. The telephoning of the exact time the train passed the particular point by the Block Operator to the Train Dispatcher.
4. The recording of such exact time by the Train Dispatcher on his "train sheets".

Applying these elements to the instant dispute, the Carrier avers that there is absent any exact passing time—no one made such an acknowledgment. In addition, for an O S to be present, it also requires a recording of the exact passing time. Here, neither the Erie or the Carrier's Block Operator, nor the Train Dispatcher, made any record of such notation on any document.

The Organization, on the other hand, contends that the meaning of an O S in the industry is ambiguous and nebulous. Hence, a method frequently employed to determine whether an OS occurred is to ascertain its purpose. Furthermore, the Organization argues that an O S is a train report and, therefore, a record of its passing is unnecessary.

We are fully cognizant of the significant of train reports and recognize the Organization's vital involvement in protecting its sphere of interest. If we are relegated to resolving the instant dispute on the basis of the purpose for which the information was requested, then we are confronted with the absence of proof on this phase by the Organization. The record is barren of any probative evidence which would indicate that the Carrier required such information in order to carry out its operation. It is, therefore, our considered opinion that under the circumstances prevalent herein, the 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of October 1969.

DISSENT TO AWARD 17518, DOCKET TE-16471

The majority has erred here both in its "analization" of the term "OS" and its understanding of the Organization's contention.

The Organization contended that the term "OS" means precisely what the Carrier, in its code of operating rules, says it means "Train Report".

The train dispatcher solicited a "Train Report" and received it from an employe of another Carrier on a rest day of the claimant. The claimant

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performs this identical work other days of the week. The claim was valid on this ground alone.

The majority recognizes—and properly so—the vital interest the employees have in the work of handling OS reports. But it then nullifies that interest by placing an impossible burden upon the employees to prove the purpose of the report. It is self evident that a train dispatcher needs such a report to carry on his functions, otherwise he would not seek it. A train dispatcher is too busy to engage in idle curiosity as to the whereabouts of a train under his jurisdiction.

This Board, in Award 15861 where a Train Report not solicited by the train dispatcher was involved, and where prior awards were distinguished, said of those prior cases:

“The Board correctly found a violation in each instance. Obviously, the train dispatchers in these two cases needed the train report information for their control functions, or they would not have taken the trouble to request the information.”

If such reasoning had been applied here there would have been no erroneous departure from established principles, and the claim would have been sustained.

For these reasons, I dissent.

/s/ C. E. KIEF
C. E. KIEF
Labor Member

CARRIER MEMBERS' REPLY TO LABOR MEMBER'S DISSENT TO AWARD 17518, DOCKET TE-16471.

The dissent to Award 17518 is predicated on the hypothesis that:

“It is self evident that a train dispatcher needs such a report to carry on his functions, otherwise he would not seek it. A train dispatcher is too busy to engage in idle curiosity as to the whereabouts of a train under his jurisdiction.”

There is nothing in the record to show that the Train Dispatcher requested in order to exercise any function of his position. Likewise the record contains no information as to the extent of the activities of the Train Dispatcher here involved on which to base a finding that he was too busy to engage in idle curiosity. Furthermore, a train dispatcher who is interested in his work is not engaging in idle curiosity when he evinces some concern as to the whereabouts of trains under his supervision.

Award 17518 did not depart from established principles. To the contrary it is predicated upon established principles as applied to the facts of

record in this dispute. The dissent does not, in any manner, detract from the soundness of the award.

/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