



Award Number 17799

Docket Number TE-17268

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
ILLINOIS CENTRAL RAILROAD COMPANY**

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

1. Carrier violated the terms of an Agreement between the parties hereto when on June 20, 1966, it required or permitted Track Supervisor J. Brosnahan, an employee not covered by the Agreement, at Mont, Illinois, to transmit a message to Dispatcher G. D. Milton at Champaign, Illinois.
2. Carrier shall, because of the violation set forth above, compensate the senior idle extra operator available to perform the work, or in the absence of such an operator at the nearest open station, Alhambra, Illinois, observing his rest day, a day's (8 hours) pay at the applicable rate for the district.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the Illinois Central Railroad, hereinafter referred to as Carrier, and its Employees in the classes specified therein, hereinafter referred to as Employees, represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Union, effective June 1, 1951, revised December 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

The issue is the right to perform the class of telephone communication work coming within the scope and contingent rules of the parties' Agreement.

The material and relevant facts in this case are: At or about 3:10 P.M., June 20, 1966, Track Supervisor John Brosnahan, an employee outside the scope of the parties' Agreement, at Mont, Illinois, a station location at which Carrier formerly had operators around-the-clock, transmitted the following message over the telephone to the train dispatcher at Champaign, Illinois:

"... The tie-tampers are tied up on the south end of the back track. I thought you might want to put out a message on that, and tell the Illinois Terminal if they deliver anything down here not to foul the turn-out to the Straight-track..."

Train dispatcher acknowledged receipt of the above message in the usual manner.

(5:25 P.M.)

To: C&E: No. 63 at Cimic, Illinois tie tamper tied up on South end of back track Mont. Switch spiked.

(5:30 P.M.)

To: C&E: Northward trains at Glen Tower. Tie tampers tied up on South end of back track Mont and switch spiked. Do Not Foul Switch.

The union contends that the telephone conversation between the track supervisor and the dispatcher was in violation of the agreement.

(Exhibits Not Reproduced)

OPINION OF BOARD: It is necessary at the outset to resolve the procedural question raised by the Carrier in relation to the identity of the Claimant. As originally filed the claim read:

"The Illinois Central Railroad for said violation of the current Telegraphers' Agreement shall compensate the Senior Idle Extra Operator available or unassigned, and/or operator observing his day of rest at nearest open station, Alhambra, Illinois. * * *"

By letter dated August 6, 1966 from the General Chairman to Carrier's highest officer, the claim was restated using the word "or" in place of "and/or" in the original claim.

The Carrier, on the property, by letter dated September 30, 1966 declined the claim on the ground that the claim was barred under Rule 27, stating that:

"* * * the employee allegedly affected has not been properly identified * * *"

Decisions No. 4 and 19 of the National Disputes Committee hold that it is not necessary to "name" the claimant in order that he be properly identified. See Third Division Award 14019. Award 14750 stated "This Board has frequently held in interpreting provisions similar to the one in the Agreement before us, that Claimants need not be specifically named, so long as they are and can be readily identifiable."

We find that the Claimant in the instant case is readily identifiable, since the claim is made on behalf of the "Senior Idle Extra Operator available or unassigned or the operator observing his day of rest at Alhambra, Illinois.

We interpret the words "and/or" in the original claim to mean "or" and the Claimant to be one person rather than two. We find support for this conclusion in Carrier's letter dated September 30, 1966 wherein the same conclusion was expressed by the use of the word "employee" in the singular. Thus the claimant is recognizable as a single identifiable person.

As to the merits of the claim, the record establishes the text of the telephone conversation between Track Supervisor Brosnahan and Dispatcher Milton wherein the condition of the track is reported. This condition brought forth orders to trains that the switch was "spiked".

The Employees contend that the message was essential and vital for the protection of train movements and the crew members in control of the

train operations. The Employees therefore conclude that this communication must be recognized as work within the scope of the Telegraphers' Agreement.

The record fails to reveal that the question of coverage of the work performed by the scope of the Telegraphers' Agreement was raised on property by the Carrier in the denial of the claim. Since it has been established by this Board that the Carrier's defense may not go beyond the reasons set forth by the Carrier's highest officer in denying the claim, we find no support for Carrier's position on this defense. See Award 14879 (Dorsey) wherein is stated: "We have held and now hold that only issues raised on the property and found in the record are subject to our consideration." See also Awards 11939, 11986, 11987, 12388, 13081, 13957, 14880, 16061, 16423 and 17372.

The Board further finds that the Petitioner has met the required burden of proof in the instant matter.

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 27th day of March 1970.