Award No. 18062
Docket No. TE-17438

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:

CLAIM NO. 1

Com. File: None – Car. File: 137-218-524 Spl
Case No. 683 Tel

1. Carrier violated the terms of an agreement between the parties hereto when on August 14, 1966 it required or permitted Conductor C. Anderson (Pilot) on Illinois Terminal Extra 1603 North, an employe not covered by the parties' agreement to take train orders Nos. 19 and 21, and receive information in connection with the movement of his train in the absence of an emergency as prescribed by Rule 4(c).

2. Carrier shall, because of the violations set forth above, compensate the senior idle extra operator, or, in the absence of such the senior idle telegrapher observing his rest day at the nearest open telegraph station, a day's (8 hours) pay at the applicable rate of the position occupied.

CLAIM NO. 2

Com. File: None – Car. File: 137-218-42 Spl
Case No. 690 Spl

1. Carrier violated the terms of an agreement between the parties hereto when on August 23, 1966 it required or permitted a member of the crew of Engine 437 to take a train order over the radiotelephone at the PPG Plant.

2. Carrier shall, because of the violation set forth above, compensate the senior idle extra operator available and/or the nearest operator available on his rest day, a day's (8 hours) pay at the rate of the Decatur Ticket Office.

CLAIM NO. 3

Com. File: None – Car. File: 137-218-524 Spl
Case No. 693 Tel

1. Carrier violated the terms of an agreement between the parties hereto when on August 30, 1967 it required or permitted IT Extra 1604 South to deliver Train Order No. 18 to IT Engine 1602 at Alhambra, Illinois.

2. Carrier shall, because of the violation set forth above, compensate the senior idle extra employe, or in the absence of such, the nearest operator observing his rest day, a day's (8 hours) pay at the minimum rate on the district.

EMPLOYES' STATEMENT OF FACTS: The claims in this case are based upon the provisions of an Agreement effective June 1, 1951, revised December 1, 1956, and as otherwise amended and supplemented, made between the Illinois Central Railroad Company, hereinafter referred to as Carrier, and The Order of Railroad Telegraphers, renamed the Transportation-Communication Employees Union, hereinafter referred to as Employes and/or Union. Copies of these Agreements are on file with your Board and are, by this reference, made a part hereof.

The issue in all of the claims incorporated herein involves the right of covered employes to perform the train order work, both by telephone and radio-telephone, including the handling of train orders in connection with the movement of trains in accordance with the provisions of the parties' Agreement.

The three (3) claims incorporated into this submission to your Board were handled separately on the property. The National Agreement of August 21, 1954, sets out the procedures and time limitations for the presentation and processing of claims and grievances. There is nothing in that Agreement which prohibits the Employes from merging several claims between the same parties, arising out of the same Agreement involving identical issues, providing each of the claims is presented within the time limits provided in Section 1 (a) of Article V thereof, and provided that the claims are presented in accordance with the other provisions of the Agreement. Such procedure has been validated by your Board in numerous Awards, amongst which are: Awards 12424 (Dorsey), 11300 (Moore), 11174, 11120 (Dolnick), 10619 (LaBelle), 4821 (Carter).

CLAIM NO. 1

The facts in this claim are not in dispute. At or about 9:00 A. M., Sunday, August 14, 1966, Illinois Terminal Extra 1603 North, while detouring over Illinois Central tracks Mont, Illinois to Avenue, needed train orders. Conductor Anderson, acting as pilot of the train, came in on the train dispatcher's telephone at Mont, made an inquiry as to the location of the 9365, also informed the train dispatcher that "we don't have any orders." The train dispatcher informed the conductor that the train orders governing the movement of his train over the Illinois Central had been put out at Glen Tower. The dispatcher rang Glen Tower, following which "Operator Seaton at Glen Tower transmitted train orders Nos. 19 and 21 to Conductor Anderson, who

"OPERATOR: You were cleared with two Orders 19 and 21 at 7:01 A. M.

CONDUCTOR: O.K., thanks."

On August 24, 1966, a claim for a day's pay based on this occurrence was filed by the local chairman on behalf of "the senior idle extra operator and/or operator observing his day of rest at nearest open telegraph station." (Carrier's Exhibit A.) That claim was declined by the superintendent of the Illinois Division and was appealed to the director of labor relations on October 24, 1966. (Carrier's Exhibit B.) On December 5, 1966, the claim was declined by that office. (Carrier's Exhibit C.)

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier raises a procedural issue in all three claims that the Petitioner failed to identify the employe allegedly "involved" and, therefore, failed to comply with Rule 27(a) of the Agreement between the parties.

We find that the employe involved in each claim has been sufficiently identified by description even though unnamed. Support for this conclusion is found in Award 12299 of this Division, wherein the Board stated:

"We can agree that Claimants should be identified without requiring that they be named. A name is not a man, but merely one form of identification of a man. Other reasonable identifications should be acceptable, the test being the pragmatic one: can he be found from the description. If the description is so diffuse, so ambiguous, so loose that a dispute would ensue as to whom it meant, it is an inadequate description. If, however, it so describes a man that he can be found without difficulty, all reasonable demands for specificity are satisfied.

* * * * *

Once before, we said, in Award No. 11214: 'It is not the purpose of the Railway Labor Act or the August 21, 1954 Agreement to dismiss disputes on mere technicalities. It is, rather, the intent to resolve them on the merits unless it is clear that the essential procedural provisions have been completely ignored or that the Carrier is unable to ascertain the identity of the Claimants."

Further support for this conclusion is to be found in Award 14019 of this Division.

In relation to the merits of the claims, we find that in Claim No. 1 "Operator Seaton at Glen Tower transmitted train orders No. 19 and 20 to Conductor Anderson, who took them over the telephone".

In Claim No. 2 the Operator at Decatur transmitted the train order over the radio telephone to the crew on Work Extra 437.

In Claim No. 3, Train Order was issued to IT Extra 1604 who carried the same to Alhambra, Illinois, and delivered same to IT Engine 1602 at that station location.

All three claims involve, basically, the same issues. In Claim No. 1 the question at hand is whether the Agreement was violated when the conductor obtained a train order over the telephone from a telegraph operator (covered by this agreement), at a point where no telegrapher was employed. In Claim No. 2 and 3 the question involves delivery of a train order to a train crew at a point where an operator is employed to be executed by the crew at a point where no operator is employed.

Rule 4(c) is cited by the Petitioner as having been violated by the Carrier. The prohibition in the Rule relates to calls from train or engine service employes to dispatchers on the telephone or the taking of train orders over the phone from dispatchers.

The situations in the instant claims do not involve taking train orders over the phone from dispatchers, but relates to taking train orders from operators who are employes covered by this Agreement.

Petitioner has failed to sustain the burden of proving a violation of the Agreement. We find no provision in Rule 4 that would restrict a train service employe from receiving a train order from a telegrapher. We further find that the train orders herein were delivered by an operator to the conductor and the train crew and that there was no direct communication to the conductor or the train crew by the dispatcher.

In the instant matter a telegraph operator copied train orders from a dispatcher and effectively delivered same to the party addressed thereto. We find nothing in the record that would establish a violation of Rule 4 of the Agreement. Accordingly, the claims 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 Employes involved in this dispute are respectively Carrier and Employes 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

Claims 1, 2 and 3 are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July 1970.

DISSENT TO AWARD 18062, DOCKET TE-17438

Railroads and their employes who submit disputes to this Board for resolution are entitled to meaningful decisions which will in fact resolve the dispute and thus clarify the parties' respective rights and obligations for their future guidance as well as simple disposition of a claim representative of the dispute.

In this Award nothing of the sort occurred. The claim was merely denied without resolution of either of the two basic disputes presented. In fact, the majority failed to recognize that there were two basic disputes.

In Claims Nos. 1 and 2 the issue was the intent and application of Rule 4C where train orders were copied by telephone in non-emergency situations by train service employes. In Claim No. 3 neither Rule 4C nor even the use of the telephone was involved.

Only with respect to Claim No. 1 does the majority even correctly describe the factual situation giving rise to the claim.

At one place in the Opinion of Board the essential facts of Claim No. 2 are correctly stated, but then a moment later, this claim is lumped with Claim No. 3 as involving delivery of a train order. But even here the "delivery" is erroneously confused with "execution".

Where such confused incomprehension of the facts exist there is little chance of a correct decision resulting. The decision which did result is patently as erroneous as the description of the claims.

Rule 4C contains language the same as has been before the Board on a number of occasions in disputes involving other parties. The decisive point is the value to be given the grammatical disjunctive participle "or" which separates the language concerning telephone conversations between dispatchers and train service employes and the prohibition against the taking of train orders over the telephone. The awards are not unanimous in their treatment of this grammatical problem. This fact and the importance of reconciling the differences, or at least supporting one viewpoint over the other, was carefully explained to the Referee, not only in a written brief presented in behalf of the Labor Members, but in oral discussion as well.

Notwithstanding the care with which the problem was presented, the majority has chosen to extend the conflict in awards without any explanation of its reasoning or, in fact, without any mention of the prior awards. Congress certainly did not intend any such result when it created this Board to settle disputes.

Particular note is taken of this reference by the majority to Rule 4C:

> ". . . The prohibition in the Rule relates to calls from train or engine service employes to dispatchers on the telephone or the taking of train orders over the phone **from dispatchers.**" (Emphasis ours.)

The last two words, which we have emphasized, **do not appear in the rule.** It is significant — and disturbing — that such an addition to the rule had to be made to give a semblance of logic to the decision.

This Board long has held to the principle that it has no authority to add to or detract from the language chosen by the parties to express their intent.

That principle is observed here in the breach, rendering the decision palpably erroneous, and, therefore, a nullity.

C. E. Kief
Labor Member

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