Award No. 19122
Docket No. TE-15446

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Herbert J. Mesigh, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
(Formerly Transportation-Communication Employees Union)

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines) that:

1. Carrier violated the Agreement between the parties when on March 18, 1963 it required or permitted an employe (assistant chief train dispatcher), not covered by said Agreement, to receive a message at Bakersfield, California.

2. Carrier shall compensate H. L. Harshman, relief wire chief-telegrapher, Bekersfield, in the amount of a call payment, two hours at the time at the time and one-half rate on March 18, 1963.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties effective December 1, 1944, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

At 3:00 P.M., March 18, 1963 the Assistant Chief Train Dispatcher at Bakersfield, California, received and copied via telephone the following message from the Agent at Hanford, California:

"Hanford, California
March 18, 1963

TO: Chief Dispatcher Bakersfield

Conductor Munson on the Coalinga Local reported a broken rail on the track serving Hanford Bottling Company three car lengths of spur or three car lengths from bumper.

Agent"

There is a telegraph office at Bakersfield, furnishing continuous service around the clock. Hanford, California, is located on the Coalinga Branch of the Bakersfield Sub-division of the San Joaquin Division, 86.6 miles from

OPINION OF BOARD: At 3:00 P. M., March 18, 1963 the Assistant Chief Train Dispatcher at Bakersfield, California, received and copied via telephone the following message from Agent at Hanford, California:

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March 18, 1963

TO: Chief Dispatcher Bakersfiled

Conductor Munson on the Coalinga Local reported a broken rail on the track serving Hanford Bottling Company three car lengths of spur or three car lengths from bumper.

Agent"

There is a telegraph office at Bakersfield, with continuous service around the clock.

Employes contend that this message was a "communication of record" and as such is work accruing to the Telegrapher class; that Carrier violated the Agreement between the parties when the Assistant Chief Train Dispatcher, not covered by said Agreement received the above message. That the Scope Rule and Rules 2(c), 16(a) and 17 were violated.

Carrier contends that the conversation or message was not a "communication of record" and did not involve or contravene any provision of the Telegraphers' Agreement.

Prior awards of this Board, involving these same parties, were reviewed by Special Board of Adjustment 553 who determined that three different tests may be applied to establish that telephone communication work belongs to Telegraphers if it falls within one of the following categories:

(1) relates to the control or movement of trains or safety of passengers or products,

(2) is a communication of record as that term has been used in the decisions, or

(3) by tradition, custom and practice on the property has been performed by telegraphers to the exclusion of other employes.

As stated in Award 12615:

"The mere fact that a message is reduced to writing does not, by itself, constitute a communication of record.

* * * a message advising of a defective rail ahead, a stalled train, **or any other hazard which could affect the safety of persons and property** either on a moving train or stalled train, may be such a communication of record. **Each set of circumstances must be separately examined to determine if the communication affects the movement or operation of a train or the safety of persons and property.**" (Emphasis ours.)

In examining the circumstances in the case at bar, we believe that the message in question is the kind of a message which must be considered as a

communication of record. Petitioner's reply contains reference to Carrier's own Book of Rules, General Rule (F) which leaves little doubt that there is a requirement for making this kind of information a matter of record to report "* * * defects in track" or "* * * any unusual condition which may affect the movement of trains * * *" to the dispatcher.

Certainly, the content of the message was more than informational and was important to the dispatcher in determining the proper movement of trains over that area of track the next day, thereby relating directly to the control and movement of trains.

We have applied categories (1) and (2) to the limited, specific set of circumstances contained within the record and find the claim to have merit.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of April 1972.

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