

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20173
Docket Number CL-20166

Dana E. Eischen, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station Employees

PARTIES TO DISPUTE: (

(The Texas and Pacific Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7263) that:

1. Carrier violated the Telegraphers' Agreement (TCU) and in particular, Paragraph 5 of the June 3, 1966 Memorandum Agreement, when, on April 19, 1971, it required an employe not covered by the Telegraphers' Agreement (TCU) to receive and copy Train Order No. 37, at Mansura Junction, Louisiana, a location and/or point where no Telegrapher covered by the Agreement is employed, and then failed and refused to compensate Claimant C. E. Dowden, as required by Paragraph 5 of the June 3, 1966 Memorandum Agreement.

2. Carrier shall now be required to compensate Mr. C. E. Dowden four hours' pay, as required by the June 3, 1966 Memorandum Agreement, Paragraph 5.

OPINION OF BOARD: There is a general Rules Agreement in effect between the parties, effective May 15, 1950. The instant dispute concerns the application and interpretation of a Memorandum Agreement dated June 3, 1966 which amended Article 20(d) of the general Rules Agreement, effective July 1, 1966. The relevant Agreement language reads as follows:

"MEMORANDUM OF AGREEMENT

between

THE TEXAS AND PACIFIC RAILWAY COMPANY

and

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

(Formerly The Order of Railroad Telegraphers)

Effective July 1, 1966, Article 20 (d) - HANDLING TRAIN ORDERS, of the Agreement between the Parties which became effective May 15, 1950, is hereby amended to read as follows:

(1) No employe other than covered by this Agreement and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call. The employe entitled to call will be notified.

"* * * * *

(5) If train orders are handled by persons other than those specified in Paragraph (1) of this rule in other than emergencies as defined in Paragraph (b) of this rule at a location where an employe under this agreement is not employed, a telegrapher to be designated by the District Chairman will be allowed four hours pay at the minimum Telegraphers' rate applicable on the division. Four hours pay shall be applicable to each location in any consecutive four hour period regardless of the number of orders handled. The Carrier will notify the District Chairman of each such train order handled with a copy to the General Chairman.

(6) Emergencies, as referred to in Paragraph (5) of this Article, shall include only casualties or accidents, storms, engine failure, wrecks, obstruction to tracks, washouts, tornadoes, slides, or unusual delays which could not have been anticipated by the Dispatcher when the train was at the last previous open telegraph office, and which would result in serious delay to traffic.

* * * * *

Mansura Junction is located on Carrier's Avoyelles Subdivision - DeQuincy Division, on a "loop" between Bunkie, Louisiana and Addis, Louisiana. The record indicates that Texas and Pacific Railway Company (T&P) telegrapher ~~positions~~ at Mansura Junction and other stations have been abolished but that T&P telegraphers are still employed at both Bunkie and Addis, Louisiana. Claimant C. E. Dowden is regularly assigned to a position of Telegraph Operator at Bunkie, Louisiana with an established seniority date of January 21, 1950. The loop of track from Bunkie to Addis, through Mansura Junction, Simmesport and Lobdell Junction is owned by the T&P but largely leased and controlled by the Louisiana and Arkansas Railway Company (L&A). Train movement on the loop is directed by L&A train dispatchers located at Shreveport.

On April 17, 1971 the L&A dispatcher issued an identical order --Train Order No. 37-- to T&P Extra No. 351 southbound at Mansura Junction and to L&A No. 42 northbound at Simmesport. Order No. 37 was received and copied by the Conductor of Extra No. 351 at Mansura Junction. This handling of an order by the Conductor is the gravamen of the instant claim. Subsequently, on April 23, 1971 the Organization filed the instant claim pursuant to Paragraph 5 of the Memorandum Agreement, in a letter which reads as follows:

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"TRANSPORTATION-COMMUNICATION DIVISION NO. 25
BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS

Date April 23, 1971
File 1011

To: Mr. C. Percy Jr.
Superintendent
T&P RR
502 Union Station
Houston, Texas

Dear Sir:

At or about 1212P.M. on the date of April 19th, 1971, an employee not covered by the Telegraphers Agreement under the Scope Rule handled train order No. 37 at Mansura Jct., La.

There was no emergency involved, therefore, I hereby designate Telegrapher C. E. Dowden, Bunkie, La. to receive a call payment at the applicable rate for this violation as provided for by Memorandum of Agreement between the Carrier and this Organization.

Please advise payroll period on which payment will be made.

Yours very truly,

VERNON WESTER /S/
District Chairman

Train Order No. 73 37

April 19th, 1971

No. 42 Eng. 80 Wait at Simmesport
until 115PM For extra T&P 351 South.
Order to No. 42 at Simmesport.

B.J.H.

Box 355

Provencal, Louisiana

Com. 1212PM

cc: - R. J. Upson,
General Chairman"

The claim was handled through the appropriate steps on the property and following denial by Carrier comes before our Board.

Both Carrier and Organization rely heavily in support of their positions upon their respective views of one another's prior handling of allegedly similar claims. The Organization strongly contends that Carrier's position on the instant claim is obviated by a letter of February 27, 1971, wherein Carrier agreed to apply the provisions of the Memorandum

Agreement to Mansura and Lobdell Junctions, and, accordingly, honored several penalty pay claims like the instant claim. Carrier, on the other hand, argues that said letter and payment was an ad hoc effort to settle a docket of backlogged claims and not a prospective letter of agreement. Moreover, Carrier asserts that the Organization's position is compromised by a February 1970 withdrawal of several claims like the instant claim.

We are not persuaded by either of the foregoing contentions nor by the prior awards cited in their behalf. The guiding principle in this regard, and one we have expressed on other occasions, is that the Railway Labor Act contemplates every sincere effort by the parties to settle disputes over the interpretation and application of agreements before resorting to the services of this Board. Accordingly, an offer of compromise or settlement of a similar claim by either party cannot be construed as an admission of liability, an abdication of rights or violation of an agreement absent compelling evidence to the contrary. To hold otherwise would run counter to well established principles intended to encourage settlement of disputes by mutual agreement. See Second Division Award 5864. Moreover, interpretation given an agreement by the parties themselves through past practice will be adopted as controlling only where the contractual language is ambiguous. See Awards 561 and 3466, this Division. Inasmuch as we find no ambiguity in Article 20(d) as amended by the Memorandum Agreement, we need look no further than the Agreement language in disposing of the instant claim.

The uncontested record shows that Train Order No. 37 was copied and received at Mansura Junction by the Conductor of T&P Extra No. 351; neither a Train Dispatcher nor an employee covered by the Memorandum Agreement. There was no emergency situation on April 19, 1971. Mansura Junction was a location where an employee under the Memorandum Agreement was not employed. Claimant C. E. Dowden is a Telegrapher designated by the District Chairman. Carrier refused to allow four hours pay at the minimum Telegrapher's rate applicable on the division.

In the foregoing circumstances and under the clear language of Paragraph 5 of the Memorandum Agreement, Carrier violated the Agreement and the claim must be sustained.

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;

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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:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 15th day of March 1974.