

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22257
Docket Number CL-22091

David P. Twomey, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8435) that:

(1) The Carrier violated the effective Agreement, particularly Rule 1 and Memorandum of Agreement of November 28, 1945, when train crew employes not of this Craft and Class southbound out of Stinson Yard were required to OS their trains upon passing Hillcrest to telegraph operators at Stinson Yard.

(2) Carrier shall compensate the senior idle extra telegrapher for 8 hour pro rata for each date of claim, or if none available, the senior regularly assigned telegrapher rested and available at Stinson Yard for 8 hours at the rate of time and one-half for each date of claim; for dates and times and for specific instances of violations as listed here below:

<u>Date</u>	<u>Train</u>	<u>Time</u>	<u>Dispatcher</u>
3/15/76	EXA 2227B	808 AM	LLH
3/14	# 418	300 AM	LBK
3/13	# 418	215 AM	LBK
3/11	# 418	310 AM	LBK
3/8	# 418	345 AM	GLT
3/7	# 418	330 AM	LBK
3/7	EXA 737 E	650 AM	LBK
3/7	EXA 744 E	510 PM	JCW
3/6	# 418	255 AM	LBK
3/6	EXA 737 E	858 AM	FWP
3/4	# 418	530 AM	LBK
3/3	# 418	535 AM	LBK
2/28	EXA 789 E	925 AM	FWP
2/27	# 418	240 AM	WJG
2/27	EXA 759 E	642 AM	WJG
2/26	# 418	315 AM	WJG
2/26	EXA 2200 A	410 AM	WJG
2/23	EXA 740 E	547 AM	GLT
2/22	# 418	130 AM	WJG

<u>Date</u>	<u>Train</u>	<u>Time</u>	<u>Dispatcher</u>
2/22	# 418	130 AM	WJG
2/21	# 418	513 AM	WJG
2/20	# 418	625 AM	WJG
2/19	# 418	525 AM	WJG
2/14	# 418	518 AM	WJG
2/13	# 418	450 AM	WJG
2/13	EXA 775 E	815 AM	WJG
2/13	EXA 742 E	840 AM	FWP
2/12	# 418	615 AM	WJG
2/12	EXA 789 E	855 AM	LLH
2/10	EXA 733 E	730 AM	GLT
2/9	EXA 759 E	400 AM	GLT
2/8	EXA 782 E	955 AM	LLH
2/7	EXA 775 E	1145 PM	CJM
2/6	# 418	925 AM	FWP
2/6	EXA 803 E	505 PM	CJM
2/6	EXA 786 E	840 PM	CJM
2/5	# 418	758 AM	LLH
2/5	EXA 760 E	955 AM	LLH
2/5	EXA 767 E	235 PM	LLH
2/4	# 418	600 AM	WJG
2/4	EXA 760 E	800 AM	LLH
2/1	# 418	710 AM	WJG
1/31	# 418	155 AM	WJG
1/31	EXA 740 E	855 AM	FWP
1/31	EXA 759 E	807 AM	FWP
1/30	# 418	700 AM	WJG

OPINION OF BOARD: Prior to this dispute, the Carrier maintained an automatic device at Solon Springs, Wisconsin which signalled the passing of eastbound trains at that point to the Operator at Stinson Yard. The Operator at Stinson Yard would then notify the Train Dispatcher, who would record the train's passing at Solon Springs on the Train Sheet. The automatic device at Solon Springs, referred to by the Carrier's Superintendent in his letter of July 15, 1976 as "an automatic OS device," and referred to in the Carrier's Rebuttal as an "ennunciator," became defective. Carrier thereafter instructed train crews to contact the Operator at Stinson Yard by radio when the eastbound trains passed Hillcrest. Hillcrest is some 18 miles south of

Stinson Yard and 11.6 miles from Solon Springs. Upon receipt of this information by the Operator at Stinson Yard, the Operator would then notify the Train Dispatcher who would record the matter on the Train Sheet. No Operators are employed at either Hillcrest or Solon Springs.

The Organization contends that the radio transmission of the information at Hillcrest by the train crews to the Operator at Stinson Yard is a violation of the Agreement. The Organization contends that this transmission is an "OS" report.

The Carrier states in its Submission that the provision applicable to this dispute is paragraph 3 of the memorandum of Agreement found on page 68 of the Schedule Agreement which states as follows:

"When no emergency exists, as above defined, an inquiry by train or enginemen as to the time or location of another train or in connection with their work, will not be considered a violation of this agreement when it does not involve the transmission of train orders, messages of record, reports or "OS" of trains."

It is the Carrier's position that radio conversations between the Telegrapher Operator and the train crews do not rise to the dignity of "OS's" in the record of this instant case. The Carrier cites Third Division Award No. 15740 (Kenan) in support of its position. The Carrier contends that a practice exists supporting the use of train crews. In his letter of April 28, 1976, the Carrier Superintendent stated:

"...the matter of a train crew giving an OS to an operator is long established and accepted. Specifically, train crews at Gladstone give their OS to the Gladstone operator on all departing trains. The same applies to train 911 departing from Soo, train 34 departing from Rhinelander and many others...."

In its Submission before this Board the Carrier listed eight situations where an Operator receives information on departing trains.

In the Carrier's Rebuttal, the Carrier identifies the crux of the dispute to be whether the message from the Train Crew to the Operator constitutes an "OS". For general background

purposes only see Third Division Award No. 4395 (no referee) and Third Division Award No. 4287 (Carter) for a statement as to what is "OS" work in railroad parlance. Also refer to what is considered "OSing" on the particular property referred to in Third Division Award No. 10978 (Moore).

The report transmitted by radio by the Train Crew at Hillcrest to the Operator at Stinson Yard was relayed by the Operator to the Dispatcher and entered on the Train Sheet. The report containing the information of the time of passing Hillcrest originated from the Train Crew and it is this, the Train Crew's information that was entered on sheet "OS", becoming a matter of record and being used to control the movement of trains. In Special Board of Adjustment No. 506 (Ray) Award No. 22 the Referee stated in part:

"...Carrier argues that any report made to the dispatcher was by a telegrapher. The violation as we see it was the report given by the train service employee to the telegrapher for relay to the dispatcher. Rule 2(c) says train service employees shall not be permitted to report trains. It does not say except to a telegrapher. If the dispatcher could use a telegrapher to get these reports from a train service employee, it could evade the rule...."

See also Public Law Board No. 680 Awards No. 5 and No. 7 (Zumas) and Third Division Award No. 17231 (P. C. Dugan). We are compelled to find that the reporting of the train's passing by the Train Crew at Hillcrest to the Operator in Stinson Yard is in violation of Paragraph 3 as set forth above.

The Carrier's assertion of a practice, the evidence on the property relating only to departing trains, is of no significance to the particular dispute before this Board, which dispute does not concern departure reports.

We find no justification for eight hours' pay for this type of service. Payment of the claims shall be for a "call" under Rule 16(b); and if more than one report was made during the two-hour period, as on 1/31, payment for just one call is required.

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 per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1978.