

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22698
Docket Number CL-22491

William M. Edgett, 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-8602) that:

CLAIM NO. 1

Claim of N. E. Meacham, Traveling Agent No. 10, Marshfield, Wisconsin, for one call-2 hours pro rata on January 27, 1977, for violation of Telegraphers' Rule 20, when Train Dispatcher issued an instruction by radio direct to the Engineer of a train in CTC territory, regarding a slow track, at 1238 PM. The message read as follows: "Do not exceed 10 MPH over Wisc. River Bridge and look out for men and equipment on Bridge."

CLAIM NO. 2

Claim of R. F. Goldamer, Traveling Agent No. 9, Marshfield, Wisconsin, for one call-2 hours pro rata on January 27, 1977, for a violation of Telegraphers' Rule 20, when Train Dispatcher issued an instruction by radio direct to the Engineer of Train No. 18 at 1103 AM. The message read as follows: "Do not exceed 10 MPH over the West Dual Control Switch at Marshfield account broken rail."

CLAIM NO. 3

Claim of R. F. Goldamer, Traveling Agent No. 9, Marshfield, Wisconsin for one call-2 hours pro rata on January 28, 1977, for violation of Telegraphers' Rule 20, when Train Dispatcher issued an instruction by radio direct to the Engineer of a train regarding a slow track. The message to Train No. 18 at 1028 AM read as follows: "Do not exceed 30 MPH at any time on both 6th and 3rd Sub Divisions."

CLAIM NO. 4

Claim of H. Harris, Traveling Agent No. 2, Appleton, Wisconsin, for one call-2 hours pro rata on February 3, 1977, for a violation of Telegraphers' Rule 20, when Train Dispatcher issued an instruction by radio direct to the Engineer of Extra 722 regarding slow track account broken rail.

The message delivered at 0910 AM read as follows: "Do not exceed 10 MPH between MP 195 and MP 196 account broken rail."

OPINION OF BOARD: The first issue to be decided in this dispute is whether or not the messages quoted in Claims 2, 3 and 4 meet the criteria of train orders as that term is contemplated in the parties' agreement and defined by Awards of this Board. It is unnecessary to resolve this issue with respect to Claim No. 1 as after this case was docketed with this Board the Carrier decided that the claim did in fact have merit and allowed its payment.

The Carrier's purpose in allowing Claim No. 1 should be noted. In reasoning the allowance of Claim No. 1 the Carrier stated.

"It was determined by Carrier that this was not an emergency situation, nor did the message constitute instructions regarding any emergency track situations."

The Carrier argues that Claims Nos. 2, 3 and 4 should not be allowed because

- a) "It is the position of the Carrier that emergency conditions existed with regard to Claims Nos. 2, 3, and 4."
- b) "It is also the position of the Carrier that the emergency instructions do not constitute train orders."

Rule 20 of the parties' agreement provides:

"(a) No employee other than covered by this schedule 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.

"(b) When employees not covered by this agreement are required to handle train orders at a location where employees covered by this agreement are not on duty any portion of the day or night, the senior telegrapher working at the nearest location to the point on the seniority district where the train order is handled shall be notified and allowed a call at the minimum telegraphers' rate applicable on the seniority district for each occurrence.

"(c) Except where other telegraphers are employed, Traveling Agents shall be considered employed and available to perform service required at all stations within his assigned territory. In the event the Traveling Agent is on duty at the time the violation occurs, he shall be paid two (2) hours at the pro rata rate of his assignment."

Rule 20 as we read it provides for payment under certain circumstances to certain telegraph service employees when employees not covered by the agreement handle train orders even when such handling is in an emergency. Thus to deny payment solely because an alleged emergency existed would not be in accord with the terms of the agreement.

The remaining question to be answered is do "emergency instructions" to a train constitute a train order.

Instructions to Train Crews can and do take various forms and substance, i.e., time tables, bulletins, hand signals, traffic control devices (both manual and mechanical), fuses, and etc. The form and substance of such instructions generally determine what is a train order and what is not. In the instant case, with respect to Claims Nos. 2, 3 and 4, we hold that the form and substance of the messages, which is quite identical to that involved in Claim No. 1, constituted a train order.

We will sustain Claim Nos. 2, 3 and 4. Claim No. 1 is moot.

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.

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Claims Nos. 2, 3 and 4 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulose
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1980.