

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23017  
Docket Number CL-22803

Richard R. Kasher, 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-8786)  
that:

(1) Carrier violated the effective Agreement, specifically Rule 1, and Memorandum of Agreement of November 28, 1945, when train crew employees not of this Craft and Class were required and/or permitted to OS their trains directly to the dispatcher via radio-telephone.

(2) Carrier shall compensate Operator A. A. Strebe, Waukesha, Wisconsin, for one (1) call, two (2) hours, at the rate of time and one-half, at the rate of his position for each of the claim dates: January 5, 11, 12 and 14, 1977, in addition to any compensation previously received for these dates."

OPINION OF BOARD: The Organization has claimed that the Carrier violated the parties' Scope Rule and Joint Memorandum of Agreement dated November 28, 1945, by permitting its conductors to report their trains' departures and giving information regarding their trains' consists. The Memorandum of Agreement reads in pertinent part as follows:

(3) 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.

The issue before this Board is whether communication made by conductors on January 5, 11, 12 and 14, 1977 were messages of record, i.e. "OS" reports, and therefore prohibited by the Scope Rule and Memorandum of Agreement, which provide that telegraphers rather than conductors have the contractual right and responsibility to make the reports.

The Carrier operates daily turn around service between Shops Yard, in Fond du Lac, Wisconsin, and North Milwaukee, Wisconsin, a distance of approximately sixty miles. From Rugby Junction to North Milwaukee, a distance of about 20 miles, the Soo Line train operates on track of the Chicago, Milwaukee, St. Paul and Pacific Railroad (CMSTP&P) by a trackage rights agreement. The Soo Line maintains a yard and clerical force at North Milwaukee and the Soo Line train dispatcher maintains a station record of Soo Line trains arriving and departing to and from the station.

The instant dispute arose because certain Soo Line conductors departing from North Milwaukee radioed the Carrier's train dispatcher with information including departure time and train consist. The Organization contends that the information provided constituted "OS" reports, work covered by the Scope Rule and limited to covered employees, in this case to telegraphers, except in emergencies under the Memorandum of Agreement.

The Carrier responded with two arguments: (1) The alleged violations occurred while the trains were on a foreign track (the CMSTP&P) and were therefore not covered by the Soo Line Agreement; and (2) The information communicated by the conductors was of an informational rather than a formal nature (i.e., the information, which was merely pencilled figures on a train sheet, was not a message of record or formal "OS" report).

Both arguments beg the issue. The "foreign line" argument ignores several facts. The Soo Line dispatcher is required to keep a record of train movements over the Milwaukee Line. The transmissions, which are the subject of this dispute, involved employees of the Soo Line and the movement of Soo Line trains. Finally, it was Soo Line work over which the Carrier had control, and which it contracted with its employees to perform.

Regarding the Carrier's second argument, that these reports were merely informational and not "OS" reports, this Board concludes that the manner in which the reports were maintained, i.e., pencilled instead of inked, is not dispositive.

An "OS" report is a train report of the time of arrival, departure or passing of a train. The purpose is to know the location of a given train at all times. The manner of maintaining is of no great significance in comparison to the contents of the reports. This Board accordingly finds that the communication made by conductors from North Milwaukee on January 5, 11, 12, and 14, 1977 were, in fact, "OS" reports. The claims for these four days are sustained.

With respect to other claims of similar nature being held in abeyance, the parties are directed to make a joint check of the records: Where a train crew member made an "OS" report, meeting the minimum definition, i.e., reporting time out or when train passed a particular milepost, the claim should be paid.

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 in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Paulsen  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1980.

CARRIER MEMBERS' DISSENT  
TO  
AWARD 23017, DOCKET NO. CL-22803  
(Referee Kasher)

The Majority has failed to understand and grasp the historical meaning and interpretation of the term "OS".

The gravamen of this dispute involves messages which the Organization allege were "OSing". Without even considering the several factors which have been used to determine if a message is an "OS", the Majority cavalierly concluded that certain transmissions by Carrier's conductors were in fact "OSing". Generally, three criteria has been employed in determining if a message is an "OS"; the message contains the time of a train arrival passing, or departure; the message directly affects or controls the movement of trains; and the nature of the message is such that a permanent record is or should be made.

Clearly, the Organization did not provide evidence concerning the use or recordation of the message. The Majority chose to ignore the Carrier's well reasoned, articulated argument that the message was purely informational and that it did not rise to the level of an "OS". The train dispatchers' statements stand unrefuted in the record suggesting the glaring oversight by the Majority in its failure to identify the message as informational only. If the Majority had accurately recognized the nature of the transmissions it would have been impossible for them to conclude that the work was covered by the Scope Rule and limited to telegraphers.

Further, the Majority concluded the following in rendering this award:

"An "OS" report is a train report of the time of arrival, departure or passing of a train. The purpose is to know the location of a given train at all times. The manner of maintaining is of no great significance in comparison to the contents of the

reports. This Board accordingly finds that the communication made by conductors from North Milwaukee on January 5, 11, 12, and 14, 1977 were, in fact, "OS" reports. The claims for these four days are sustained."

Once again, the record in this case was ignored as the Majority accepted the Organization's allegation that the transmissions were actual departure times. The Carrier perspicaciously drew attention to the fact that the messages did not involve actual departure time, rather, only estimated departure times were transmitted. This is significant because it goes to the very question of whether or not an "OS" was given. Obviously, an estimated departure time is not an actual departure time, neither would it control the movement of trains nor demand permanent recordation. Clearly, then, the transmissions in question were not "OSing" as understood by many previous Board Awards. See Awards: 5181 and 10525, among others.

The Majority also failed to recognize a long standing procedural principle of this Board. That is, the Organization failed to meet its burden of proof with regard to their allegation concerning whether the messages were actually departure times. The Organization never produced substantial probative evidence on the issue. Further, the Majority never addressed the issue in its award appearing to accept the Organization's allegation as an agreed upon fact and making their decision on that basis.

The Majority in their award went beyond their authority when they addressed the issue of claims of a similar nature not presently before the Board. The original claim contained four specific dates on which alleged violations occurred and this should have been the extent of the Majority's consideration. However, it appears the Majority chose to exceed their statutory boundaries and decide the fate of claims not properly before the Board.

This Award reflects a misunderstanding and improper interpretation of the term "OS". Therefore we register our dissent.

*J. R. O'Connell*  
J. R. O'CONNELL

*J. E. Mason*  
J. E. MASON

*P. E. LaCrosse*  
P. E. LACOSSE

*P. V. Varga*  
P. V. VARGA

*W. F. Euker*  
W. F. EUKER

LABOR MEMBER'S ANSWER TO  
CARRIER MEMBERS' DISSENT TO  
AWARD 23017, DOCKET NO. CL-22803  
(Referee Kasher)

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After carefully reading Carrier Members' Dissent to Award 23017 and carefully re-reading the Award itself and again carefully studying and re-reading the record in Docket CL-22803, I seriously doubt that the Dissenters even briefly scanned the record. The Dissenters have demonstrated that they do not understand the record, and if they had taken the time to read it, they would not have woven a web of foolish or stupid remarks. For example, the penultimate paragraph of the dissent states:

"The Majority in their award went beyond their authority when they addressed the issue of claims of a similar nature not presently before the Board. The original claim contained four specific dates on which alleged violations occurred and this should have been the extent of the Majority's consideration. However, it appears the Majority chose to exceed their statutory boundaries and decide the fate of claims not properly before this Board."

If the Dissenters had read as far as page two of the Carrier's Ex Parte Submission they would have known that it was the Carrier itself that placed the fate of similar claims before the Board.

The last paragraph of Carrier's Statement of Facts stated:

"All pertinent correspondence in connection with this dispute is attached in exhibit form and made a part of this record. Correspondence labeled as Exhibits "A" through "P" is related to the initial claim before the Board. Subsequent dates of claim were submitted to the Carrier and are being held in abeyance pending the Board's decision. Pertinent correspondence relating to these other dates of claim as well as conference confirmations are included in exhibit form. The Carrier did not include all of the numerous letters granting extensions of the time limits in which to process this dispute to the Board, but the dispute was timely handled by both parties."

"The Subsequent dates of claim attached to this dispute are:

1977

February 1, 11, 15

March 16

April 18, 19, 20, 21, 22, 25, and 26

May 4, 12, 13, 16, 19, 20, 24, and 27

June 2, 7, 9, 10, 11, 14, 15, 17, 20, 21, 22,  
23, 24, 27, 28, 29

July 1, 5, 7, 13, 14, 15, 18, 19, 20, 21, 22  
25, 26, 27, and 28

August 1, 2, 3, 5, 10, 11, and 12

September 19, 21, 22, 23, 26, 27, and 30

October 3, 4, 5, 11, 12, 13, 14, 19, 21, 25,  
26, and 28

November 1, 2, 4, 7, 8, 9, 10, 14, and 15

December 16, 21, 23, 29

1978

January 4, 5, 6, 11, 12, 13, 16, 17, 18, 23, 24  
and 25

February 1, 2, 3, 15, 20, 24, and 27

March 1, 6, 7, 8, 10, 13, 14, 15, 16, 20, 21, 27, 28,  
29, 30, and 31

April 3, 5, 6, 10, 17, 18, 21, 24, 25, 26, and 27

May 1, 8, 17, 19, and 30

June 5 and 8"

It is ludicrous for the Dissenters to now argue that the Majority exceeded its authority when the fate of similar claims was disposed of as it was the Carrier itself that joined the issue and placed such claims before the Board for consideration.

The above is not the only instance where the Dissenters have demonstrated their complete lack of understanding of the record. Another instance where they clearly indicated that they do not have the faintest idea on what was involved is their statement:

"The gravamen of this dispute involves messages which the Organization allege were 'OSing'."



When the dispute in Docket CL-22803 was handled on the property and before this Board the sole issue was whether messages sent by train crews were messages of record. To determine what the issue was, all the Dissenters had to do was read the first statement of the Position of the Carrier. This had ought not to be too difficult and could happen even before the briefest attention span lapsed as it starts on page 3 of Carrier's brief. Here the Carrier's Director of Labor Relations starts his argument on his case by informing the Board very succinctly what the dispute was all about:

"The sole issue is whether or not the information conveyed to the dispatcher by the conductor of Train No. 15 constitutes a 'message of record.'"

It is ironic that the Dissenters would have the unmitigated gall to accuse the Majority of straying from the record when it is demonstrated that they themselves failed to even read the record, for had they read the record, they could not make some of the statements they made unless their purpose is to deceive, confuse or lie.

Carrier Member Dissenters also attempt to massage and mold the argument that the message conveyed to the dispatcher by the conductor of Train No. 15 was "purely informational" and thus somehow different from other messages of record. It had ought to be obvious to anyone that all messages between conductors and dispatchers are informational. What other purpose would a message have unless the dispatcher and the conductor were telling each other jokes, discussing the weather, passing on idle gossip, or prattling like childish Dissenters. Obviously the messages involved in this dispute were "purely informational." They were

informational and they contributed to the operation of the railroad. The purpose of the message was to inform the dispatcher the location of the train and this information was used by the dispatcher to direct train operations throughout the rest of his territory. It was informational and necessary and it was recorded on the train sheet for use in directing train movements.

Carrier Member Dissenters attempt to make a "federal case" on the permanent recording issue. The conductor's message was originally pencilled onto the train sheet. After the train had arrived at its destination and the conductor had signed out on the train register, then the details of the message were permanently inked on the train sheet. This devious method of recording, it is argued, somehow or other licenses a violation of the agreement. Carrier's arguments on the great pencil vs. ink controversy were correctly disposed of by the Majority. As far as the Organization is concerned it would have made no difference if the dispatcher used Crayolas to record the message. Item (3) of the Joint Memorandum of Agreement (quoted in the Award) and the Scope Rule do not, except in emergencies, permit direct communication between conductors and dispatchers when such communications involve train orders, messages of record, reports or OS of trains.

Carrier Members' Dissent must be ignored, for all it demonstrates is that the Dissenters did not understand or perhaps did not even read the case.



  
J. C. Fletcher, Labor Member

Labor Member's Answer  
to Carrier Members' Dissent  
to Award 23017