

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24922
Docket Number CL-24181

I. M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Missouri-Kansas-Texas Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9472) that:

Claim No. 1:

(a) Carrier violated the Rules of Agreement DP-451, including but not limited to Rule 1, Section 3, when on January 23, 1980, it allowed, required, and/or permitted Engineer Perkins on Extra 314 North, while stopped at Georgetown, Texas, a blind siding to copy train order No. 170.

(b) Carrier further violated these same Rules when on January 23, 1980, it allowed, permitted and/or required Engineer Green and Conductor Logan on Extra 211 South, to copy train order No. 170 at 11:41 p.m., while stopped at Granger, Texas.

(c) Carrier shall allow clerical employe B. A. Adams a two (2) hour call at the time and one-half rate for January 23, 1980.

Claim No. 2:

(a) Carrier violated the Rules of Agreement DP-451 including but not limited to Rule 1, Section 7, when on January 27, 1980, it allowed, required and/or permitted Engineer Schneider and Conductor Bourland on Train No. 22 to copy and handle Train Order No. 78 via radio, while stopped at Granger, Texas at 12:11 p.m., when that office was closed in a non-emergency situation.

(b) Carrier shall now allow Mr. B. A. Adams, Agent, Taylor, Texas, eight (8) hours' pay at the time and one-half rate of Agent-Telegrapher Position No. 4894 for January 27, 1980.

OPINION OF BOARD: Both claims herein involve the alleged copying of train orders by train personnel on January 23rd and 27th 1980 rather than by personnel covered by the Agreement (at Georgetown and Granger, Texas). The relevant rules state as follows:

"RULE 1

Section 7:

(a) Employes not covered by this Agreement at closed offices or non-telegraph offices shall not be required to handle train orders, block or report trains, receive or forward messages, by telegraph, telephone or mechanical telegraph machines, but if they are used in emergency to perform any of the above service, the pay for the Agent or Telegrapher at that office for the day on which such service is rendered shall be the minimum rate per day for Telegraphers as contemplated in this Agreement plus regular rate. Such employes will be permitted to secure train sights for purpose of marking bulletin board only.

"NOTE: It is understood that 'closed offices' also mean an office where other employes may be working not covered by this Agreement, or an office which is kept open a part of the day or night.

(b) 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 employe covered by this Agreement is employed and is available or can be promptly located except in emergency, in which case the telegrapher will be paid for the call (and the dispatcher will notify the Superintendent so proper record and allowance will be made).

There appear to be two distinct matters in dispute with respect to these claims. First, Carrier asserts that Petitioner has not met its burden of proof in that no evidence was submitted proving that the train orders were copied by train personnel. Secondly, Carrier argues that the claim was filed on behalf of an improper Claimant.

(With respect to the first matter above, Petitioner has submitted information as to the contents of the train orders, the location of the copying of orders, the name of the employee performing the task, the train involved and the date and time of the occurrence. On the property when Carrier demanded proof the Organization asked for a joint check of the records to verify its allegation, which was refused by Carrier. Carrier insists that it is not required to open its records in order to develop a claim for the Organization. Further Carrier denies that the orders were indeed copied by employees other than those covered by the Agreement. Several observations are in order. First it is apparent that Petitioner has made a prima facie case by the information submitted. Second, Carrier alone has the records in its possession to either substantiate or deny the factual assertions made by Petitioner. It would have been simple for Carrier to have presented the orders in question to establish its position in response to the claim. This it has chosen not to do. Carrier is in error in this regard since the burden shifted to it upon the Petitioner making a prima facie case for its claim. Carrier merely denied that the actions had taken place and made no attempt whatever to substantiate its position.)

Both claims herein were filed by the Division Chairman of the Organization on behalf of an Agent assigned to a position at Taylor, Texas, some ten miles from the Granger office involved. The Claimant, however, lived in Granger. There was an Agent who serviced the Granger office but the claim was not filed in her behalf. Carrier relies on the clear language of Section 3 (b) and asserts that Claimant herein is not the proper claimant. Petitioner argues that Carrier was in error since Claimant resided in Granger and was available for the work in question. The Organization also alleges certain improper motives on Carrier's part in its actions herein which justified the selection of the particular Claimant. Let it suffice to say that the allegations made by Petitioner are unsupported and may not be considered. As the Carrier has pointed out, the language of Section 7 (b) is clear and unambiguous (as is paragraph (c) of the Section). A claim under this provision of the Agreement must be made on behalf of the telegrapher (or agent) at the particular office involved. This was not done in this case and constitutes an irreparable flaw. Therefore, the claim must be denied.

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

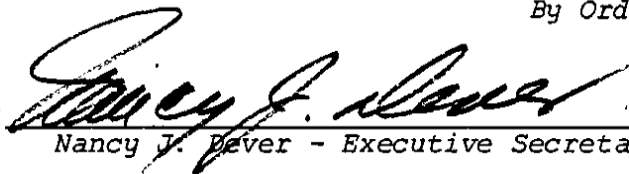
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 30th day of July 1984.