

The Third Division consisted of the regular members and in addition Referee John E. Cloney when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union  
(  
(The Atchison, Topeka & Santa Fe Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood  
(GL-10093) that:

Claim No. 1

(a) Carrier violated the provisions of the current Clerks' Agreement at Frick, Colorado on March 24, 1985 when it failed and/or refused to allow an employe covered by the agreement to relay a Train Order when no emergency existed, and

(b) Carrier shall now compensate Claimant W. R. Davis, who is the senior idle regularly assigned employe who handles Train Orders nearest the point where the violation occurred, three (3) pro rata hours' pay of his position, as a result of such violation, in addition to any other compensation Claimant may have received for that day.

Claim No. 2

(a) Carrier violated the provisions of the current Clerks' Agreement at Campo, Colorado on March 24, 1985 when it failed and/or refused to allow an employe covered by the Agreement to relay a Train Order when no emergency existed, and

(b) Carrier shall now compensate Claimant M. N. Montoya, who is the senior idle regularly assigned employe who handles Train Orders nearest the point where the violation occurred, three (3) pro rata hours' pay of his position, as a result of such violation, in addition to any other compensation Claimant may have received for that day."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The two Claims involved here have a common origin arising out of the issuance of the following Train Orders:

- I. March 24, 1985                      Train Order No. 741  
To C & E Extra 5346 East at Frick Phone Booth  
At Frick

Order No. 729 is annulled  
Extra 5346 East Meet Extra 5144 West at  
South Jct. Siding  
Extra 5144 West Take Siding

DDD

Complete 11:22 A.M.                      Conductor Wilson

- II. March 24, 1985                      Train Order 741  
To: C&E Extra 5144 West Via Radio

At MP151

Order No. 729 is annulled  
Extra 5346 East meet Extra 5144 West  
at South Jct. Siding  
Extra 5144 West Take Siding

DDD

Complete 11:28 A.M.                      Conductor Collyer

Claimant Davis was the regularly assigned Train Order Clerk La Juanta, Colorado, while Claimant Montoya held the same position at Boise City, Oklahoma.

Rule 3 of the Agreement states:

"RULE 3--HANDLING TRAIN ORDERS 3-A

3-A. No employe other than covered by this Agreement and train dispatchers will be permitted to handle Train Orders at offices of communication where an employe covered by this Agreement is assigned and is available or can be promptly located. At such locations, when Train Orders are not handled as outlined in this Rule 3-A, except in cases of emergencies as defined in Rule 3-B, the qualified employe who should have handled the Train Order will be paid a call.

3-B. When Train Orders are issued to train and/or engine service employees at locations other than described in Rule 3-A above, such Train Orders must be relayed through an employee covered by this Agreement, except in emergencies as defined below:

- (1) Storms, washouts, high water
- (2) Wrecks, slides, snow blockades
- (3) Accidents
- (4) Failure of fixed signals or train control
- (5) Engine, equipment failure or break-in-two's which could not have been foreseen prior to train passing or leaving last open office of communication and which would result in serious delay to trains.
- (6) Danger to life or property requiring immediate attention

3-C. It is understood there is no violation of any Agreement rules when Train Orders are copied by train and/or engine service employees, however, when Train Orders referred to in Rule 3-B are not relayed through an employee covered by this Agreement, except in emergencies, the senior idle regularly assigned employee who handles Train Orders at the nearest location to the point on the seniority district where the Train Order is received will be paid three pro rata hours at \$9.62 per hour effective January 1, 1981 (subject to subsequent general wage adjustments), except that no more than one such payment shall be allowed if more than one Train Order is received at the same location during a consecutive eight hour period. An employee shall not be considered eligible for payment within the meaning of this Rule 3-C if on authorized absence of vacation. In each instance wherein payment is due under this Rule 3-C, the Chief Dispatcher will arrange for payment to be made and will notify the employee entitled to payment."

Carrier contends that the Dispatcher relayed Train Order 741 to the operator at La Juanta as there was no operator on duty at Boise City, but due to an inoperative radio the La Juanta operator could not relay the orders. Therefore, the Dispatcher issued the order direct to 5346 East via a phone booth at Frick, Colorado and to 5144 West via radio. Carrier contends the emergency provisions of Rule 3-B apply.

The Organization argues a malfunctioning radio is not within the Rule definition of an emergency and contends it was not the malfunctioning radio, but rather the change in meeting points, that would have delayed the trains.

Contrary to the Organization we believe an inoperative radio falls within the meaning of the term "equipment failure" as used in Rule 3-B(5) if it "would result in serious delay to trains." Although the Organization contends that radio failure has not been so interpreted we believe, as stated in First Division Award 17069:

"The Awards concerning emergencies cannot all be harmonized . . . . The official responsible for action is not required . . . to engage in fine time computations as between alternative procedures in order to determine whether there is an emergency. He must make a practical decision."

In answer to the contention that it was the change in meeting points which would have caused delay we can only note it was Carrier's prerogative to make such change. The question is whether inability to communicate the Train Orders made necessary by the change, because of a malfunctioning radio, would result in serious delay. Clearly it would if the change could not be communicated. While what constitutes an emergency is not susceptible of exact definition, the parties have agreed by Rule that equipment failure which would result in serious delay to train falls within the term.

This Board has frequently commented upon the choice of reactions open to Carriers in emergency situations. Thus in Third Division Award 14327, in a discussion of emergencies, it was noted:

"It appears from the record that the most reasonable and practical thing to do was done. The fact that an alternative course might have been followed does not take the situation outside of the established and commonly known definition of the term."

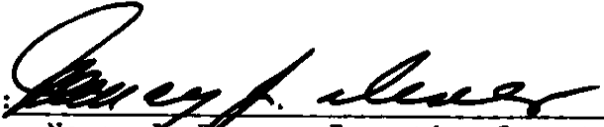
While other methods to relay the Train Orders might have been available, we cannot say that, given the circumstances, the method chosen was not consistent with Rule 3-B(5).

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Fever - Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1989.