



ORT File:1849

AWARD NO. 2

CASE NO. 2

SPECIAL BOARD OF ADJUSTMENT NO. 266
THE ORDER OF RAILROAD TELEGRAPHERS

Vs.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM:

1. (a) The Carrier violated the provisions of the Telegraphers' Agreement when and because it required or permitted the Conductor in charge of Extra 635 to copy Train Orders Nos. 2 and 3, April 24, 1954 at 2:14 A.M. and 3:11 A.M., respectively, at a location east of Owego where an employee covered by the Telegraphers' Agreement was not employed.

(b) The Carrier violated the provisions of the Telegraphers' Agreement when and because it required or permitted the Conductor in charge of Extra 902 to copy Form "B" clearance Card 7:44 A.M., August 3, 1954 and subsequent dates until the rail laying was completed at the south end of the siding, at Preble, a location where an employee covered by the Telegraphers' Agreement was not employed.

2. In consequence of the violation of 1 (a) above, E. Troupe, an idle extra employee, shall be allowed one day's pay (\$14.92); in consequence of the violation in 1 (b) above, the senior idle employee, extra in preference, shall be allowed a day's pay (\$14.01) for August 3, 1953, and the same amount for each subsequent dates the practice continued. The records shall be jointly checked to determine the payee or payees.

OPINION OF BOARD:

In Part 1 (a) of this claim it is contended the Agreement was violated when the Conductor in charge of Extra 635 East (A. Slowey) copied two train orders on April 24, 1954. This train was stopped about three miles east of Owego at approximately 1:30 a.m. on this date due to a hot box. The Conductor notified the Train Dispatcher by wayside telephone of this situation, whereupon a train order was issued to Train No. 8 authorizing a detour movement against current of traffic on the westward track around this freight train through the operator at Owego. Copies of this order were issued to westward trains at Binghamton and to Conductor Slowey at the wayside telephone east of Owego. Subsequently the Conductor copied a train order for the detour of

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Train NE-6 from Owego to Apalachin, this detour also made necessary by the disabled condition of Extra 635 East due to a hot box.

Article 3 (a) of the Agreement states: "No employe other than covered by this agreement and train dispatchers will be permitted to handle train orders except in cases of emergency." Among the examples of emergencies specified in Paragraph (d) of this Article are unusual and unforeseen delays due to hot boxes, which would result in serious delay to traffic. A hot box situation of this nature existed in the present case. The Organization contends, however, that there was no necessity for the Conductor of Extra 635 East to copy the subject train orders, since such orders were issued to control the movement of other trains. On the other hand, it is beyond dispute that it was necessary for the involved Conductor to have the information contained in these train orders in order to ensure the safety of both his own train and other trains.

We are of the opinion and find that Conductor Slowey copied the subject train orders only as the result of an emergency situation within the meaning of Article 3. Thus Part 1 (a) of the claim must be denied.

After having filed its ex parte submission in this case the Organization advised that a typographical error was made, in that the date specified in Part 1 (b) of this claim should be August 3, 1953 -- instead of August 3, 1954. It appears that on the corrected date, and possibly for a period subsequent thereto until the rail laying was completed at the south end of the siding at Preble, the Conductor in charge of Extra 902 copied a Clearance Form B, this clearance giving permission for the train to proceed by the signal at the involved location. The Organization contends this clearance card is the equivalent of a train order, since it controls the movement of

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trains and is necessarily a matter of record. It is contended that no emergency was involved in this situation and that the clearance card could have been issued through the Agent-Operator at Tully. It is agreed that an operator was no longer located at Preble. This is single track territory.

The Carrier responds that a clearance card is not a train order and since no train order was involved there is no merit to the claim. In addition, it is contended that this claim should be denied because of the Organization's undue delay in progressing it to the Adjustment Board, and also because of the indefinite nature of the claim.

A clearance card governs the movement of trains and is a communication of which a record is required. Had the subject stop indication been an unforeseen condition, we would not be disposed to find that a contract violation occurred when the Conductor copied the Clearance Form B as received direct from the Train Dispatcher by wayside telephone. In this instance, however, the stop indication was a condition known well beforehand by the Dispatcher's Office, due to the rail laying being done. Under these circumstances we conclude that the clearance card should have been issued through an Operator. We find that the Agent-Operator at Tully is entitled to a call payment for August 3, 1953 and for each subsequent day on which this violation occurred at the south end of the siding at Preble.

A W A R D:

Claim denied in part and sustained in part to the extent indicated in the above Opinion.

Lloyd H. Bailer
Lloyd H. Bailer, Neutral Member

W. I. Christopher
W. I. Christopher, Employee Member

F. Diegtel
F. Diegtel, Carrier Member

New York, New York
July 7, 1959