



SPECIAL BOARD OF ADJUSTMENT NO. 525

AWARD NO. 28

CASE NO. 28

GRAND DIV.: BU-8751-49

ORGANIZATION FILE:

R-1321

CARRIER FILE:

TE-17-63

EMPLOYEES' STATEMENT OF CLAIM:

1. (A) Carrier violated the Telegraphers' Agreement on March 31, 1963, when it required and permitted Conductor on work extra 5952 to copy a train order for his train at M.P. 186.36.

(B) Carrier violated the Telegraphers' Agreement on March 31, 1963, when it required and permitted Conductor on train No. 9 to copy a train order for his train at Sidney.
2. (A) Carrier shall compensate the senior idle extra Telegrapher with less than 40 hours work in his work week and in the event there are no idle extra Telegraphers with less than 40 hours work in their work week, carrier shall compensate the senior regular assigned man off on rest day, for one day's pay (8 hours) for the violation claimed in 1. (A).

(B) Carrier shall compensate the senior idle extra Telegrapher with less than 40 hours work in his work week and in the event there are no idle extra Telegraphers with less than 40 hours work in their work week, Carrier shall compensate the senior regular assigned man off on rest day, for one day's pay (8 hours) for the violation claimed in 1. (B)."

SPECIFIC FINDINGS:

On Sunday, March 31, 1963, at 12:30 A.M. three pilings were washed out from bridge 187.94 two miles east of Steamboat Springs by ice jam. A pile driver was called out of Denver at 4:00 A.M. and departed Phippsburg as Work Extra 5952 at 1:40 P.M. to repair damage.

The pile driver arrived at bridge at 2:10 P.M., drove two temporary pilings. The bridge was safe for traffic at 10:05 P.M. Train No. 10 was first over bridge at 10:27 P.M. - 13'24" late. No. 9 departed Phippsburg at 6:20 P.M. 3'52" late and was delayed at Sidney 3'40" meeting No. 10.

Conductor on Work Extra 5952 copied train order No. 20 at 9:05 P.M. at Mile Post 186.36 which is 4.74 miles east of Steamboat Springs where there is an agent employed but not on duty. At 9:12 P.M. March 31, 1963, conductor on train No. 9 copied train order at Sidney, 7.4 miles east of Steamboat Springs. Claim for eight hours was denied.

It is Carrier's first position that this was an emergency under a provision of Rule 21(C)2. It also defends on the grounds that a specific claimant was not named.

The Organization denied that an emergency existed and contends that because the work was not performed at a station where employees are employed, it does not fall under provisions of Rule 6(M) as the Carrier contends, nor under the Call rule. The Organization asserts that Rule 6M "Work on Unassigned Days -" refers to work performed on the unfilled days of a regular assignment, for instance, the sixth and seventh day of a five-day assignment.

We are not persuaded by the Carrier's strict construction of Rule 21(C)2 defining "emergency," nor do we feel compelled to follow Award 6639 in its parsing of the defining sentence. Webster defines emergency as, "an unforeseen combination of circumstances which calls for immediate action." The rule names a number of examples followed

by a general catch-all phrase, "other unforeseen occurrences," and concludes, "which could not have been anticipated when train was at previous open telegraph office, etc." This latter phrase, we find, applies to the occurrences contemplated in the entire paragraph, otherwise we pass completely beyond a reasonable and ordinary meaning of an emergency. (Quite aside, we do notice a semi-colon in 1st Division Award No. 14951, cited by Carrier, which is not present in our Rule). The facts before us, with long time spreads, do not spell out an emergency.

The remaining question concerns compensation. The National Railroad Adjustment Board has ruled in numerous cases that a claimant need not be named so long as he can be identified.

The instant work was improperly performed by the conductors and Rule 21 was violated. Assuming, as Carrier contends, that the work could have been performed by the telegrapher at Steamboat on a single call, the Carrier did not proceed in that manner. We are concerned with a penalty day and the Organization must determine which one of the two claimants shall receive it as we do not grant double penalties.

AWARD

Claim sustained per Findings, supra.

SPECIAL BOARD OF ADJUSTMENT NO. 525

Denver, Colorado
March 12, 1964

(Signed) J. Glenn Donaldson
J. Glenn Donaldson, Neutral Member
Chairman

(Signed) R. K. Anthis
R. K. Anthis, Organization Member

(Signed) C. E. Baldrige - Dissent
C. E. Baldrige, Carrier Member