

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Roscoe G. Hornbeck, Referee**

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY  
COMPANY—Coast Lines**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway System that:

1. The Carrier violated and continues to violate the Agreement between the parties when it requires or permits train or engine service employes to handle train orders; and

2. The Carrier shall compensate (a) the senior qualified extra telegraph service employe on the seniority district who has not already become entitled to payment under Article XIII of the Agreement an amount equivalent to a day's pay for the following specific dates: March 12, 1954; July 3, 1954; July 11, 1954; July 20, 1954; July 21, 1954; July 22, 1954; October 26, 1954; November 18, 1954; December 12, 1954; December 17, 1954; December 19, 1954; December 20, 1954; December 21, 1954; December 22, 1954; December 27, 1954; February 21, 1955; March 12, 1955; and March 21, 1955; (b) the two such senior extra employes an amount equivalent to a day's pay each for November 27, 1954; December 18, 1954; December 23, 1954 and February 20, 1955, on each of which dates two violations occurred; and (3) the three such senior extra employes a day's pay each for November 11, 1954 and December 24, 1954, on each of which dates three violations occurred. If there be no idle extra employes on any of the above listed dates the Carrier shall compensate the senior regularly assigned employe or employes idle on a rest day, on each of such dates and/or occasions, an amount equivalent to eight hours at the time and one-half rate of his position; and

3. The Carrier shall be required to compensate the senior idle extra employe or the senior regularly assigned employe idle on a rest day on the basis of claim in item 2 above for each day and each occasion that such violations occur subsequent to the dates named therein.

**EMPLOYEES' STATEMENT OF FACTS:** An Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

In conclusion, the Carrier respectfully asserts that the Employes' claim in the instant dispute is entirely without support under the governing agreement rules in effect between the parties hereto and should be either dismissed or denied for the reasons previously expressed herein.

The Carrier is uninformed as to the arguments the organization will advance in its ex parte submission, and accordingly reserves the right to submit such additional facts, evidence and arguments as it may conclude are necessary in reply to the organization's ex parte submission or to any subsequent oral argument or briefs presented by the Order of Railroad Telegraphers in this dispute.

All that is contained herein has been both known or available to the Employes and their representatives.

**OPINION OF BOARD:** Two preliminary questions are raised by the Carrier.

(1) The jurisdiction of the Board to entertain the Claim because on the property the several items, now comprehended in one in the appeal to this Board, were presented as separate claims and may not be joined here.

(2) The failure to name the individual claimants it is asserted precludes an Award under the Railway Labor Act.

We express no opinion as to the validity of those defenses but consider and dispose of this submission on another aspect presented by the record.

It certainly is no longer necessary to cite Awards in support of the proposition that the party which makes a Claim must offer proof to support it.

No informality in procedure, which properly is indulged by the Board in the presentation and consideration of Claims, will remove the necessity of proof of essentials material to the establishment of a favorable Award.

Of course, many submissions proceed upon ex parte statements only and, when material statements are made by one party and admitted or not denied by the other they may be accepted as established facts. But, if not admitted or if denied the party which has the burden of proof must go forward and support its averments in some approved manner.

It is also recognized that those who prepare the Claims on the property may not be versed in technicalities of procedure but that does not change the fact that this Board has not the power to waive the necessity of proof where required.

The formal claim here is that on thirty-two specific occasions, with dates named, the Carrier violated the Agreement between the parties when it required or permitted "train or engine service employes to **handle train orders.**" (Emphasis ours.) A violation defined in Section 1 of Article XIII of the Agreement. However, at the panel discussion, it was agreed that the charge properly should be lodged under Section 2 of Article XIII, viz:

"Train and engine service employes will not be required or permitted to **copy train orders or messages of record from train dispatchers for the purpose of advancing the movement of their train or other trains, except in cases of emergency.**" (emphasis ours.)

and it was urged that the communications involved were properly designated as "messages of record".

Among other defenses the Carrier relies on Section 3(a) of Article XIII:

"It is understood that the following precedures are permissible and not in conflict with this Agreement:

(a) At points where there is no telegrapher or telephoner employed, \* \* \*, a telephone conversation \* \* \* about the probably arriving time of trains."

Upon this issue and the jurisdictional issues a record of more than 200 pages is developed, lengthy and learned briefs filed and many Awards cited.

Unfortunately for the Claimant upon the fundamental requirement of proof the following appears:

Although there are thirty-two specific dates wherein it is asserted telephone communications were given by train dispatchers, received and copied by train crews, there is no showing, with one exception, of the claimed content of any communication. That exception appears in the first letter making the Claim from the Local Chairman of the Telegrapher's Committee, in which it is said:

"At 11:16 P. M., March 12, 1954, a member of the crew of Extra 275 East called the dispatcher on the telephone from Pisgah, and inquired as to where and how the Eastward passenger trains were running.

"Dispatcher L. W. Parsons, at San Bernardino, told him as follows:

"Use five (5) hours on No. 24 to Ash Hill and four (4) hours east of Ash Hill. And No. 4 use forty (40) minutes to Amboy."

"We find that no emergency existed at this time."

The answer to this letter does no more than to admit the receipt of the Claim, as stated by the Local Chairman of the Committee, and concludes with this paragraph,

"The agreement provides that information about probable arrival time of other trains is permissible \* \* \*."

The next letter progressing the claim does no more than to elaborate on the position of the Organization and defense of the Carrier. The succeeding letters to and through the highest officer of the Carrier designated to consider the appeal make no change in the respective contentions of the parties.

At page 60 of the record the Carrier sets out in detail thirty of the Claims of the Committee as it had received them, but does not admit that they correctly state the purported communications.

In setting forth the Claim of March 12, 1954, which is the one communication appearing in full in the Organization's ex parte statement, the Carrier states it thus:

"On March 12, 1954, a member of the train crew of Extra 275 East called the train dispatcher on the telephone from Pisgah, California at 11:16 P. M., inquiring as to the probable arrival time of Trains No. 24 and No. 4 and was advised that No. 24 would be 5 hours late at Ash Hill and No. 4, 40 minutes late at Amboy."

It will be noted that there is substantial material difference in the content, as set forth above and that relating to the same communication, as set out in the statement of the Organization, heretofore quoted.

The Carrier did not and has not at any time admitted the content of the communication of March 12, 1954, or of any other of the communications referred to in the Claim, to be as contended by the Organization.

In the situation thus developed it was the obligation of the Organization to go forward with its proof that the communications, or some one of them, were as it asserted. This proof must have been available from the source from which the Organization got the information upon which the Claim was prepared.

The Carrier at all times has contended that all the train dispatchers did when called by a member of the crew of Extra 275 East was to tell him the arrival time of following trains. It claims further that the progress of the freight train Extra 275 East was controlled by the block system in operation on that part of the system over which the trains were moving and not by train order or message from the dispatcher. These defenses, however, are not material to our question which is restricted to the burden of proof which was at all times upon the Organization.

It is also to be noted that although it will be presumed that train orders are in all instances of record, all messages are not and such messages as are contemplated by Section 2 of Article XIII of the Agreement must be "messages of record." There is no proof whatever of this aspect of the Claim.

Upon the whole record it appears that the Claim is not supported by any proof on matters which are material and vital to the sustaining of any part thereof. Because of the lack of such proof, we can not find that the Agreement has been violated.

**FINDINGS:** The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schuly  
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March, 1960.