

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
CHICAGO GREAT WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of Transportation-Communication Employees Union on the Chicago Great Western Railway, that:

1. Carrier violated the Agreement between the parties when at 2:02 A. M. on May 26, 1964, it required or permitted a member of the Engine Crew of Train No. 42 to handle Block Card (Train Order) No. 210 at or near station at West Concord, Minnesota.
2. Carrier shall compensate P. M. George, Agent-Telegrapher at West Concord, Minnesota, for a call, May 26, 1964.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective June 1, 1948 (reprinted May 1, 1958), as amended and supplemented, is available to your Board and by this reference is made a part hereof.

West Concord, Minnesota, is a one-man station located on the Minnesota Division, St. Paul District of the Carrier's lines, 62.3 miles south of St. Paul, Minnesota (Northern terminus) and 116.2 miles north of Oelwein, Iowa (Southern terminus of the District). West Concord is 9.1 miles north of Dodge Center, Minnesota and 9.4 miles south of Kenyon, Minnesota. The Mile Post designation of the West Concord station is 467.4 (representing miles from Kansas City).

The position at West Concord is classified Agent-Telegrapher. The assignment of the position is 8:00 A. M. to 5:00 P. M. (one hour for meal), Monday through Friday with rest days of Saturday and Sunday. The station is normally closed on the Saturday and Sunday rest days. At time of claim P. M. George was the occupant of the position of Agent-Telegrapher at West Concord.

On May 26, 1964, Train No. 42 encountered a yellow indication Block Signal about one-half mile south of the West Concord station, and could see (in night time) that the next signal, located about one mile north of the West Concord was in stop position. Thereupon (at yellow signal about one-half mile south of the West Concord station) a member of the Engine Crew

to which reference is made in letter dated April 27, 1965, reproduced at pages 11-12-13 of Carrier's Statement of Facts, setting forth the history and evolution of the Caution Card on this property during the past 40 to 50 years. Caution Card, Form 384, reproduced at top of Carrier's Exhibit A, in use 40 to 50 years ago, is the forerunner of present Caution Card, Form 11. As stated at page 13 of Carrier's Statement of Facts:

"Caution Card, Form 384, originally was not issued by the train dispatcher, but by the signalman in the territory where block signal was located, and the engineman addressed was required to send Caution Card, Form 384, to office of Superintendent upon completion of trip.

However, with the advent of telephone communication and its utilization for train dispatching and train movements, Caution Card, Form 384, was revised to provide for issuance by train dispatcher in lieu of signalman direct to conductor and engineer of the train involved and eliminated requirement of sending Caution Card to office of Superintendent upon completion of trip. * * *

Caution Card, Form 11, serves the same purpose as the original Caution Card, Form 384, and the fact that improved communications have permitted its issuance by train dispatcher in lieu of signalman, obviously has not had the effect of transforming the Caution Card into a Form U Train Order (Form 19) as contended by the Organization. However, history of the Caution Card (Forms 11 and 384) does emphasize the fact, as previously stated herein, that Caution Card is designed for the use of, and over the years has been utilized by, members of train and engine crews at points other than 'telegraph and telephone office where an operator is employed' as contemplated by Rule 16, and that work in connection with the handling thereof has not been historically and traditionally performed by employes of the craft represented by your Organization on this property."

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant in this case is the Agent-Telegrapher at West Concord, Minnesota, regularly assigned daily except Saturday, Sunday and holidays, with hours of service 8:00 A.M. to 5:00 P.M. with one hour for lunch. Instant claim is for a two hour call based on the following circumstances.

On May 25, 1964, a north-bound freight train derailed the trailing truck of a box car a short distance south of the first automatic block signal north of West Concord and travelled a considerable distance before the derailment was discovered. The wheels of the derailed car damaged and broke a number of bond wires of the automatic block signalling system, resulting in a display of a Red or Stop indication by the first block signal north of West Concord, as well as the first block signal south of West Concord, and display of a yellow or caution indication by the second block signal south of West Concord.

When the north-bound train 42 approached this general area in the early morning of May 26, 1964, the crew observed that the block signal displayed a yellow indication, and reported this over the radio to the nearest radio sta-

tion at Hayfield, Minnesota. Train 42 reduced its speed in compliance with the operating rules and prepared to stop for the next block signal, which displayed a red indication. This was reported to the telegrapher-operator at Hayfield, who was engaged in a telephone conversation with the Train Dispatcher at Oelwein, Iowa. He obtained Caution Card No. 210 from the Train Dispatcher and, in turn, relayed this to the Crew of No. 42 over the radio, authorizing them to proceed to Kenyon, Minnesota, where the block signal displayed a green or proceed indication and permitted No. 42 to resume normal speed.

The Organization alleges that this radio communication to the crew constituted a violation of the Scope Rule. This latter rule is general in nature, and does not mention radio communication as coming within its purview. Nor does the evidence of record indicate that this type of communication has been handled by telegraphers by history, custom and practice to the exclusion of all other employees. Indeed, the record is replete with evidence that the converse is true. We can, therefore, see no violation of the Scope Rule.

The Organization further avers a violation of Rule 16, which is the standard train order Rule. There is a difference of opinion between the litigating parties as to whether the Caution Card is in effect a train order. There is also a conflict between the parties as to where precisely the communication itself was received. Carrier steadfastly maintained that the communication was received at a point six miles south of West Concord, and not at a "telegraph or telephone office where an operator is employed", as envisioned by Rule 16. Further, that it was received over the radio from a telegrapher at Hayfield, Minnesota, and that the train crew had no direct communication with the Dispatcher at Oelwein, Iowa.

We are aware of awards emanating from this Board to the effect that the handling of undisputed train orders under similar circumstances, i.e.,—when copied from a telegrapher (not direct from train dispatcher) by a member of a train or engine crew at a point where a telegrapher is not employed, is not violative of the Agreement on this property.

Further, if we were to concede that the Caution Card was a train order, we cannot find a violation of Rule 16. The conflict of evidence as to where precisely the radio communication was made, does not, even when considered in its best light from the opposing factions, indicate conclusively that it was received at a station where a telegrapher was employed.

We are strengthened in our conclusion on this matter by the fact that over the years, the Organization by means of a Section 6 notice has attempted to negotiate new rules, which, if adopted, would have included radio communication such as we have here within the Scope of the Agreement. The evidence and the awards involving the same parties and similar circumstances are persuasive that the Carrier did not violate their contract. Claim will 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 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. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March, 1969.