

Award No. 1166
Docket No. TE-1061

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY—WESTERN LINES**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Atchison, Topeka and Santa Fe Railway that officials of the Carrier, in directing telegraph or telephone operators to place train orders and clearance cards for same received by them while on duty, in a box outside the station building at Belvidere, Kansas, to be picked up by train crews which are to act upon them several hours after the operator has been released from duty, are violating the operating rules of the Carrier and Rule 13 of the Telegraphers' Agreement and that this improper practice shall be discontinued."

JOINT STATEMENT OF FACTS: "An agreement bearing effective date of December 1, 1938 is in effect between parties to this dispute, a copy of which is on file with the Board.

"Belvidere is located on the Englewood district, which is a branch line of the Panhandle Division. Train No. 72 leaves Belvidere two days per week at a time the agent-telegrapher thereat is not on duty. The Carrier requires the agent-telegrapher at Belvidere to place train orders and clearance cards for same for train No. 72, which are received by him during his regular shift, in a box and lock the box with a switch lock. When the crew for train No. 72 go on duty, they unlock the switch lock and procure the train orders."

POSITION OF EMPLOYES: "Article 13, Telegraphers' Schedule Agreement reads:

'No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call.'

"Rules and Regulations of the Operating Department, Atchison, Topeka and Santa Fe Railway System contain the following rules:

'Rule 210: When a train order has been transmitted, operators must, unless otherwise directed, repeat it at once from the manifold copy in the succession in which the several offices have been addressed. Each operator receiving the order should observe whether the others repeat correctly. When the order has been repeated correctly by an operator, the response "complete" and the time, with the initials of the superintendent, will be given by the train dispatcher. The operator receiving this response will then write on each copy the word

ing practices the Carrier shall adopt and pursue in the performance of its business, because the Carrier has clearly and distinctly shown that its operating practices are not in contravention of the provisions of the Agreement between the parties. The Board is, therefore, asked to dismiss the complaint of the employes on the ground that the Board is not empowered under the authority reposed in it, to rule that the employes shall determine what operating practices the Carrier may adopt."

OPINION OF BOARD: The claim and joint statement of facts as well as the contentions of the parties, are set out above. Briefly, Belvidere, Kansas, a station and telegraph office on the carrier's line, is served by an agent-telegrapher. A certain train leaves that station at a time when the agent is not on duty, but who may be located and is available for calls. The carrier, instead of calling its agent at an opportune time for that purpose, requires that the agent shall place orders received by him during his regular shift in relation to that train in a box locked with a switch key in the agent's charge, whence the train crew, also provided with a key thereto, may obtain the orders as it goes on duty.

The question is whether the procedure adopted by the carrier contravenes rule 13 of the Telegraphers' Agreement. It reads: "No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call."

At root, the controversy has to do with compensation of telegraphers, into which—not exhaustively stated—enter rates of pay and assured opportunity to do the work properly within the scope of their activity. The quoted rule was designed to prevent encroachments upon their work. See Award No. 86. The Belvidere office, as the carrier must have appraised the volume of its business there, only warranted the employment of a telegrapher for one "trick," eight hours of the twenty-four. To limit it so was within the control of the carrier, but the curtailed service, as we are persuaded, made it incumbent on the carrier either to engage in nothing at that station calling for the services of a telegrapher in relation to train orders during the "off" period, or to arrange for the required service by "calling" its telegrapher as provided in the rule. It is not questioned that had the train crew in charge of the train involved taken it out when the telegrapher was on duty, orders for its operation would have come through that employe at an appropriate time, and been delivered by him to the crew. Rule 210 of the carrier's operating rules requires that when a train order shall be "complete," the telegrapher shall "personally deliver a copy to each person addressed (conductor and engineer) * * *." Of course, as the carrier maintains, operating rules are not part of the working agreement obtaining between the parties; but in the matter of the interpretation of rule 13 of the agreement we think it legitimate to have recourse to rule 210. It is reasonable to believe that when rule 13 was entered into, the parties thereto contemplated that the employes' right "to handle train orders," meant that after the manner stated in rule 210 they were to make delivery of such orders to the conductor and engineer personally, and that when a telegrapher was available at a telegraph office, as here, he would perform the service in the manner indicated by that rule, in usual course if on duty, and pursuant to "call" if off duty. We have said that "under a fair and reasonable interpretation" of rule 13, there would be involved "the physical process of passing" train orders "from hand to hand." See Award No. 709. The carrier contended in Award No. 86, already cited, that the expression "handle train orders" only meant to "copy train orders," and that since a telegrapher had copied the train order involved there, the carrier had "met all of the requirements set forth" in the rule; but we discarded that argument as not sound, saying: "The rule is quite clear and requires no unusual interpretation. Doubtlessly it was made for the purpose of preventing encroachments upon that work to which the employes in that particular craft were entitled." See, also, Award

No. 1096, a late pronouncement, which is similar in facts and like of determination with the Awards we have reviewed more at length. On the whole, we are convinced that it was the intention of the parties to make rule 13 of the agreement broad in its application, and to embrace therein recognition of the right of telegraphers employed in the railway service to enjoy whatever of employment that service offered; and that in appraising the scope thereof there was not dearth of knowledge of the carrier's operating rule 210, as well as of the rigidity of its enforcement at the hands of carrier management, as also appears. It is not consistent, we think, nor fair, that the carrier should require the observance of its general rule 210 at stations where it has full complement of telegraphic force, and where, necessarily, no additional compensation burden could attach, and then undertake to ignore that practice at stations where it offers the minimum of regular employment, and thus nullify the provision of rule 13 of the agreement for "calls" in instances of need for additional train order service.

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 carrier violated rule 13 of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of July, 1940.

DISSENT TO AWARD NO. 1166, DOCKET NO. TE-1061

The situation presented in this dispute is simple as shown by the record presented by the parties and briefly set forth in the Opinion of the Board:

Agent-telegrapher at the single office involved copied train orders and after completing that operation placed them in a box equipped with a switch lock from which the train crew addressed procured them and thereafter executed them in the course of their duties.

The question of that procedure raised by the employes' claim was that it violated Article XIII of the Telegraphers' Agreement reading:

"No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call."

This rule is quoted in the second paragraph of the Opinion of Board and in the third paragraph thereof the Award proceeds to declare:

That the rule was designed to prevent encroachments upon telegraphers' work and that it was "encumbent on the carrier either to engage in nothing at that station calling for the services of a telegrapher in relation to train orders during the 'off' period, or to arrange for the required service by 'calling' its telegrapher as provided in the rule."

The additional restriction thus given Article XIII, unstated therein, is alleged to be supported because Rule 210 of the carrier's operating rules (not a contract agreement) required that when the train order shall be complete, the telegrapher shall personally deliver a copy to each person addressed. Thus the Award extended the meaning of the word "handle" in Article XIII to comprehend the delivery after its completion. This was done in contradiction of the history of the understanding which the parties had of Article XIII heretofore, which history was complete in the record. In ignoring that record and depending upon Rule 210 for persuasion to the conclusion to thus add further restriction to the meaning of Article XIII, the Award ignored a closely succeeding operating rule (also not a contract agreement), Rule 217, which with equal directness, so far as giving meaning to the purpose of Article XIII is concerned, instructed the manner of delivery of train orders to a point not a train order office or one at which the office was closed, prescribing specifically other method of delivery than that of "personally delivering a copy to each person addressed." If reasoning from the carrier's instructions (that are not a part of the contract between the parties) be adopted to give meaning to a provision of the contract as was done here by use of instructions in Rule 210, in all conscience, Rule 217, of exactly contrary specifications, in equitable reasoning could not be ignored.

By that one-sided process the Award further proceeds presumably to support a dictum from another Award, No. 709, to indicate that Article XIII involved "the physical process of passing" train orders "from hand to hand." Such illogical and impractical dictum thus illogically and unilaterally supported serves as its own comment upon construction of the words and meaning of a provision of the agreement, such as Article XIII, particularly, as again here noted, in the light of the history which this record contains.

The Award then further proceeds to refer to a recent preceding Award, No. 1096, as being "similar in facts and like of determination with the Awards" reviewed in the instant Opinion. In thus attributing similarity for support of the conclusions in the instant Opinion, again this Award ignored the direct statement in the Opinion of Board in Award 1096 which reads:

"It must be concluded, therefore, that in so far as Rule 217 of the Rules and Regulations of the Transportation Department, or the practice thereunder upon which the carrier relies, applies to points which are not telegraph or telephone offices, it is not in conflict with the Agreement; * * *"

Rule 217 in the dispute there involved is of the same intent and meaning as Rule 217 in the instant case. The outstanding declaration in Award 1096 that there is no conflict with the agreement in delivery of train orders to points which are not telegraph or telephone offices, thus clearly distinguishing that Rule 16 (identical with Article XIII here) did not require personal delivery to each person addressed, should have not been ignored, just as Rule 217 in connection with Rule 210 of operating instructions should not have been ignored when persuasion of these corollary documents was being accepted and ascribed as the basis for concluding that additional restrictive meaning, unintended and heretofore not understood, was now to be found in the wording of Article XIII.

The unilateral, and thus improper, process of determining the meaning of a contract rule contrary to the record presented shown by the conclusions reached in this Opinion are sufficient to condemn the Award as being unsound and unjust.

R. F. RAY
C. P. DUGAN
R. H. ALLISON
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