

Award No. 1167
Docket No. TE-1062

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—EASTERN LINES**

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers, Atchison, Topeka, and Santa Fe Railway, that the telegrapher-clerk at Coffeyville, Kansas, be paid a call for each day train orders for train No. 74 at his station have been when the telegrapher-clerk was not on duty, handled by employes not covered by the Telegraphers' Agreement."

EMPLOYES' STATEMENT OF FACTS: "There is in evidence an Agreement between the parties bearing effective dates of February 5, 1924 and August 1, 1937, respectively, as to rules and rates of pay.

"At Coffeyville, Kansas there is located a telegrapher-clerk, rate 74¢ per hour, assigned hours 9:00 A. M. to 6:00 P. M. with one-hour meal period, six days per week. This employe is also given a call on Sundays from 4:00 P. M. to 6:00 P. M.

"At Cherryvale, Kansas, there is located a telegrapher-clerk, rate 73¢ per hour, assigned hours 8:00 P. M. to 4:00 A. M., seven days per week.

"The train service in connection with this dispute is as follows:

Train 74 (daily)
Departs Coffeyville 7:30 P. M.
Arrives Cherryvale 8:15 P. M.

Runs as Extra (daily)
Cherryvale to Independence
and return usually arriving
Cherryvale between 1:45 A. M. and
2:00 A. M.

Train 73 (daily)
Departs Cherryvale 8:05 A. M.
Arrives Coffeyville 8:50 A. M.

"There is no other regular service between Coffeyville and Cherryvale and no extra service except in cases where the regular service will not suffice.

"Coffeyville, the terminal or tie-up point for train crews arriving on No. 73, is located on the Coffeyville District of the Southern Kansas Division and is the terminus of a 16.6 mile branch line running north and south (east and west timetable designation) out of Cherryvale.

result would and should have been reached had there been presented in that case the showing we have presented in this. Any other result would be contrary to the clear duty of the Board.

"Employes also cite Award 709 by Referee Spencer, in a dispute from this Carrier which involved a question foreign to the one under discussion. Award 709 covered a dispute as to whether the Carrier complied with Article XIII of the agreement when it permitted others than employes covered by the Telegraphers' Schedule and train dispatchers to make by ditto or other mechanical process additional copies of train orders from the original orders that were copied by telegraphers. The majority of the Board in its Award No. 709 ruled that such additional copies should be made by telegraphers. There is not involved in this submission any question about copying train orders, as both parties have subscribed that the train orders which were delivered to the conductor and engineer at Cherryvale were transmitted to, received and copied by telegraphers. With reference to that part of 'Opinion of Board' in Award No. 709 reading:

"It would appear that under a fair and reasonable interpretation of this rule, the handling of a train order should include not only the physical process of passing it from hand to hand in the performance of its function

It is the view of the Carrier that this was an assumption by the majority that the words 'handle train orders' as used in Article XIII was construed by the parties as meaning hand to hand delivery of train orders, which assumption by the Board was in error, first, because that dispute was not before the Board, and, second, the Carrier has submitted herein indisputable evidence that the words 'handle train orders' as used in Article XIII was intended and has been interpreted by the parties to mean the transmission, receiving and copying of train orders. Clearly, therefore, the Board must rule on the dispute on the basis of the facts and the intent of Article XIII as understood by the parties.

"Award No. 709 issued by the Board under date of August 3, 1938 and the erroneous assumption by the Board in its 'Findings' in that award that the words 'handle train orders' meant hand to hand delivery, contrary to the understanding of the parties, is undoubtedly the very reason why the instant claim is before the Board as a violation of the agreement. Had the Board in its 'Findings' in Award No. 709 not erroneously assumed what the words 'handle train orders' as used in Article XIII meant, and that it was an erroneous assumption has been clearly proven by the Carrier in the evidence herein submitted, the present claim of the organization would be before the Board as a protest, under the Railway Labor Act, against the Carrier's operating practices; and indeed, boiled down, all the Board is asked to decide is whether it should vest in the employes the right to say what operating 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.

"For the information of the Board Article XIII of the Telegraphers' Schedule of February 5, 1924 was re-negotiated by the parties in a schedule effective December 1, 1938, copy of which schedule is on file with the Board and is referred to and hereby made a part of the record in this case."

OPINION OF BOARD: The claim, facts and contentions are set forth above. For our immediate study, it is sufficient to say that both Coffeyville, Kansas, and Cherryvale, Kansas, are stations where a telegrapher-clerk is employed for one shift per day, at Coffeyville from 9:00 A. M. to 6:00 P. M. six days per week, plus a "call" on Sunday, and at Cherryvale from 8:00 P. M. to 4:00 A. M. seven days per week. The trains involved, operated

daily, are No. 73, Cherryvale to Coffeyville, and No. 74, Coffeyville to Cherryvale. Train No. 73 arrives at Coffeyville 3:50 A. M., which is before the telegrapher there has gone on duty, and train No. 74 departs Coffeyville at 7:30 P. M., or after that telegrapher has gone off duty; but he is available at all times important to this inquiry and subject to call. The telegrapher at Coffeyville is not "called" to handle orders for train No. 74. Instead, the dispatcher sends orders for both trains to the telegrapher at Cherryvale while that employe is on duty, but the orders for train No. 74 are formally addressed to that train at Coffeyville. The Cherryvale telegrapher is directed to deliver both sets of orders to the train crew of No. 73, which he does. Usually, but not always, and never necessarily, there is identity of personnel of the train crews. The claim is that the telegrapher at Coffeyville should be paid for a "call" each day that train orders covering movements of train No. 74, Coffeyville to Cherryvale, have been handled by the telegrapher at Cherryvale in the manner indicated.

Considering the philosophy of our awards heretofore promulgated, Nos. 86, 709, 1096, and, currently, No. 1166, Docket TE-1061, we think the claim here is meritorious. In form, the orders for train No. 74 were as if sent to the telegrapher at Coffeyville for delivery to the train crew appointed to have charge of that train. By means of a "call" to the Coffeyville telegrapher, in manner provided by rule 13 of the applicable working agreement, quoted above, and set out in the awards we have cited, that which was fictional would have been real. That the runs of the trains were short, that generally there was identity of train crews in charge of the two trains, and that to "call" the Coffeyville telegrapher in the circumstances appearing would be poor economies, are beside the question. Coffeyville is a telegraph station, a telegrapher is employed there, and train No. 74 is initiated at and departs that station. The telegrapher there, although off duty, was available. Orders to the crew of train No. 74, the facts and the working agreement rule in mind, should have gone through and from the telegrapher in whose behalf this claim is presented.

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 employe involved in this dispute are respectively carrier and employe 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. 1167, DOCKET NO. TE-1062

The Opinion of Board forming basis for the Award in this docket found the claim here meritorious because of Awards 86, 709, 1096 and, concurrently, the immediately preceding Award, No. 1166, by this Division,—awards covering other circumstances of more or less remote character. As stated by the author of this Award, it was in consideration of the "philosophy" of those awards that this claim was found meritorious. It is fair to deduce therefrom that the philosophy thus applied for this decision

was permitted to outweigh fair interpretation of the single contract provision, Article XIII, that required such interpretation on the basis of the record presented in order to assure just decision.

In our dissent to the immediately preceding Award, No. 1166, the unilateral use of that portion of the carrier's operating instructions in the record of Award No. 1166, ignoring a parallel rule of the operating instructions of contrary bearing as related to the contract, and the similar unilateral reliance upon a portion of the Opinion of Board in Award 1096 which supported the opinion that there was conflict with the agreement but ignoring the portion of Award 1096 which declared that there was no conflict with the agreement, has been noted. There, as here, the exclusion of those phrases of those corollary documents which would have cancelled the reasoning based on the phrases of the same documents relied upon to develop the philosophy used to support the claim, exhibits the error of reasoning and of the Award which again finds the delivery of the train orders as here done to be comprehended by the restriction of Article XIII.

"Handling" of train orders evidently does not embrace the process of delivery from the operator to the train crew addressed even though the persuasion of Award 1096 were accepted in lieu of the record in this case, as it is declared by that Award to be "not in conflict with the agreement" applying to points which are not telegraph or telephone offices; and "handling" by train service employees at points where operators are not employed therefore is not a violation of Article XIII. "Handling," therefore, as included in Article XIII, neither by the record of this case, nor by support of Award 1096, comprehends the delivery here subject of claim.

As declared in Award 1096, one of the awards upon which the Opinion of Board here relies to build up the philosophy leading to the sustainment of this claim, there being no violation in making delivery to the train crew addressed by having another train crew carry the orders unlimited distances for such delivery, it is a travesty to declare that under the circumstances of the instant case there is a violation when the delivery is made to the train crew addressed and the orders are never out of the hands of that crew thereafter until they are executed by them.

It is not here being said that authors of awards are to be denied the right to consider the philosophy of collateral material in the process of reaching a decision in any dispute, but it is with the utmost sincerity here stated that when such philosophy uses that which appears in matter only of detached relation to the immediate issue at hand and extracts therefrom only such phrases as tend to support the philosophy deduced, ignoring connected phrases in the same documents which declare exactly to the contrary so far as bearing upon the issue being determined, then the philosophy is out of place, and being contrary to the contract, is an innovation to be condemned. None may review the record presented in the immediate docket and in the docket immediately preceding, Award 1166, Docket TE-1061, without having disclosed to them that the philosophy built up from the detached awards cited is in conflict with the understanding which the parties to the immediate dispute had until this time held in respect to the restriction imposed by Article XIII.

The additional restrictive meaning given that Article by this Award applied to the circumstances of this case is one that clearly was never intended and was not understood by the parties, as completely indicated by the record of this docket, and the Award giving such contrary meaning, founded upon the insecure basis of a philosophy that is faulty by reason of its one-sided derivation, can as a consequence but be faulty and unjust.

R. F. RAY
C. P. DUGAN
R. H. ALLISON
A. H. JONES
C. C. COOK