

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, 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 Atchison, Topeka and Santa Fe Railway that a regularly assigned telegrapher at Parker, Arizona, be paid a call for each instance on each day since October 1, 1938, on which he was required by the carrier to pin train orders, received by him, to the register book at his office upon being released from duty at the end of his regular tour of duty, to be picked up by the conductor and engineer of the trains addressed during the period the telegraph office was closed for the day and no telegrapher on duty or called to complete the handling of the train orders involved."

JOINT STATEMENT OF FACTS: "An agreement bearing effective dates of February 5, 1924, as to rules and August 1, 1937, as to rates of pay is in effect between the parties.

"Prior to October 1st, 1938, there was regularly assigned at Parker, Arizona an agent-telegrapher and two telegrapher-clerks providing full twenty-four (24) hour telegraph and train order service. Effective October 1st, 1938, the assignments were changed to agent-telegrapher, 9:00 A. M. to 5:00 P. M., one telegrapher-clerk, 5:00 P. M. to 1:00 A. M., and one telegrapher-clerk 6:00 A. M. to 2:00 P. M.; the office closed between 1:00 A. M. and 6:00 A. M. These assignments continued to and including December 17, 1938, at which time twenty-four (24) hour continuous train order and telegraph service was re-established.

"During the period of time October 1, 1938, to December 17, 1938, both inclusive, train orders addressed to trains due to arrive Parker between 1:00 A. M. and 6:00 A. M. were transmitted on thirty-seven (37) occasions to the telegrapher whose assignment was 5:00 P. M. to 1:00 A. M., with instructions to leave them in a convenient location to be picked up by the train crews."

POSITION OF EMPLOYEES: "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.'

it is the view of the Carrier that this was an assumption by the Board 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.

"Employees also cite instance where telegraphers have been cautioned about the provisions of Operating Rule 210, as to which the carrier states that the letters quoted by the committee dealt with cases where the telegraph operators **had not complied** with carrier's instructions. The employees have not cited a case and cannot cite a case where telegraphers have been criticized for pinning train orders on train register when instructed to do so by authority of the carrier. The employees agree, as will be seen from the 'Statement of Facts,' that '... with instructions to leave them ...' instructions were issued by the proper officer of the company as to the performance of the work. Certainly the carrier has the right to instruct its employees as to how they perform service for the carrier, and contrarily, the employees do not have the right and the Board cannot vest in them the right to say to management how it shall instruct its employees in the rendition of their service.

"In their position the employees quote a portion of the Railway Labor Act, as to which the Carrier submits that exception was first taken by The Order of Railroad Telegraphers to the handling of train orders where copied by an operator and placed on the register book for delivery to train crews, in April, 1938 in connection with the handling of orders at Reedley, California, which case incidentally has likewise now progressed on appeal to the Board and is referred to in the instant claim in order that the Board may have a clear understanding of the origin and handling given these claims. In the Reedley case the employees' claim was originally presented as a grievance involving safety first measures and violations of Rules 210 and 217 of the Rules and Regulations of the Operating Department, clearly indicating that the organization did not consider that the handling at Reedley involved any violation of the agreement between the parties, viz., Carrier and Order of Railroad Telegraphers. The employees then saw fit to cite portions of the Railway Labor Act, amended, approved June 21, 1934 as they have in this case, in an effort to establish a basis for lodging their complaint with the Board and as a last resort and based on the erroneous assumption by the Board in its 'Findings' in Award No. 709, they injected Article XIII of the Telegraphers' Schedule into the discussion and claimed a schedule violation. 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 proved by the Carrier by the evidence submitted herein to be directly contrary to the understanding of the parties, the present claim as well as the one at Reedley would not be before the Board as a violation of Article XIII but would be before you 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 shall **vest** in the employees the **right to say** what operating practices the Carrier shall adopt and pursue in the performance of its business, because the Carrier has 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 petitioner on the ground that the Board is not empowered, under authority reposed in it, to rule that the employees shall determine what operating practices the Carrier may adopt."

OPINION OF BOARD: The claim and contentions of the parties, together with citations of awards and quotations therefrom, are set forth

above. Briefly, as said in the carrier's brief, "this case is similar to Docket TE-1066." There (Award No. 1169), we determined that the procedure adopted by the carrier in making delivery of train orders was violative of rule 13 of the agreement. So here.

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 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. 1170, DOCKET NO. TE-1076

The Award in this docket is declared by the Opinion of Board to be a case similar to Docket TE-1066, and the Award found that there was violation of Article XIII as was also found in Docket TE-1066.

So, too, is the Dissent rendered to Award No. 1169, Docket No. TE-1066 re-iterated as Dissent to the instant Award, and reference thereto made for that purpose.

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