

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—EASTERN LINES**

**EMPLOYES' 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 Fort Madison, Iowa, rate 74¢ per hour, assigned 8:15 A. M. to 4:15 P. M., seven days per week, is entitled to a call for each day train orders for train No. 12 at Fort Madison have been handled at Fort Madison by employees not covered by the Telegraphers' Agreement."

**CARRIER'S 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 Fort Madison, Iowa, rate 74¢ per hour, assigned 8:15 A. M. to 4:15 P. M., seven days per week, is entitled to a call for each day train orders for train No. 12 at Fort Madison have been handed by the Missouri Division conductor to the Illinois Division conductor of that train at Fort Madison."

**EMPLOYES' STATEMENT OF FACTS:** "An Agreement bearing date of February 5, 1924 as to rules and August 1, 1937 as to rates of pay is in effect between the parties to this dispute.

"Shopton and Fort Madison, Iowa are located on the Missouri Division. Shopton is the terminal for both Illinois and Missouri Division passenger engine crews. Fort Madison is the terminal for both Illinois and Missouri Division passenger train crews and is located approximately two miles east of Shopton.

"At Shopton, Iowa there is maintained a relay telegraph office in which is located the following employees subject to the Telegraphers' Schedule:

Occupation	Assigned Hours
Late Night Wire Chief	12:00 P. M.- 8:00 A. M.
Night Wire Chief	4:00 P. M.-12:00 P. M.
Telegrapher (1)	8:00 A. M.- 4:00 P. M.
Telegrapher (1)	4:00 P. M.-12:00 P. M.
Telegrapher (1)	12:00 P. M.- 8:00 A. M.
Telegrapher-Printer Clerk (1)	11:00 A. M.- 7:00 P. M.
Printer-Clerk (1)	8:00 A. M.- 4:00 P. M.
Printer-Clerk (1)	8:00 P. M.- 4:00 A. M.

Above employees are assigned seven days per week with the exception of the telegrapher-printer clerk and the printer-clerk assigned 8:00 P. M. to 4:00 A. M., who are not assigned to work on Sundays and holidays.

"The employees now at the Fort Madison, Iowa station who are subject to the provisions of the Telegraphers' Schedule are:

"Award 86, by Referee Samuell, is referred to by the employees. Apparently, in that case the Carrier did not present evidence such as we have presented of a long course of conduct by both parties, showing the clear meaning of the rule. The clear indication of Award 86 is that a different 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.

"Employees also cite Award 709 by Referee Spencer, in a dispute from this Carrier which involved a question foreign to the one under discussion. Award No. 709 covered a dispute as to whether the Carrier complied with Article XIII of the agreement when it permitted others than employees 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 at Fort Madison 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 employees 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 employees on the ground that the Board is not empowered under the authority reposed in it, to rule that the employees 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 renegotiated 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:** Shopton and Fort Madison, railroad points in Iowa, are telegraph stations. At Shopton continuous telegraph and train

order service is maintained, while at Fort Madison, although originally continuous telegraph and train order service was maintained there, since 1924 only two telegraph-clerks have been employed, assigned seven days per week, one from 8:15 A. M. to 4:15 P. M. and the other from 12:00 midnight to 8:00 A. M. Effective April 17, 1938, the carrier ordered that train No. 12, east bound, although scheduled to stop at Shopton and Fort Madison, and is taken over at the latter station by a new conductor, will not receive clearance cards at Fort Madison. "Clearance card and train orders for this train," says the order, "will be issued to \* \* \* Division conductor at Shopton, who will deliver to \* \* \* Division engineman at Shopton and to \* \* \* Division conductor at Fort Madison." The train in question is scheduled to reach Fort Madison at 5:37 P. M., at a time, as will be noted, when there is no regular telegraphic service at that station, but where, as seems unquestioned, a telegrapher is available and subject to call.

In behalf of the claim it is urged that under Article XIII, of the Agreement, only telegraphers and train dispatchers may handle train orders at telegraph stations, hence, as said, orders from the dispatcher governing train No. 12 from Fort Madison, which, as we have seen, is such a station, should go to a telegrapher there, serving under call, if necessary, and delivered by that employe to the conductor who takes over the train at that point.

Any handling other than that advanced by the employes, including that adopted by the carrier here, as we are constrained to believe, breaches the Agreement. Hence, and not pausing for extended statement and analysis of the Agreement, fully developed by the record, or of the many Awards cited and digested by the parties in their written contentions, we conclude the claim should be sustained.

**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, reparation to date from September 10, 1938.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 19th day of December, 1940.

#### Dissent to Award 1304—Docket TE-1111

The author of the Opinion preceding this Award undertakes a further constrained extension of the philosophy he adopted in his interpretation of the meaning of Article XIII of the Agreement in Awards 1166, 1167, 1168, 1169 and 1170, hence the dissents appended to Awards 1166, 1168, 1169, 1170 and particularly the dissent to Award 1167, are hereby made the basis of this dissent to the instant Award.

/s/ C. C. Cook  
/s/ C. P. Dugan  
/s/ A. H. Jones  
/s/ R. H. Allison  
/s/ R. F. Ray