

**Award No. 1489
Docket No. TE-1559**

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of the Order of Railroad Telegraphers, Chicago, Rock Island and Pacific Railway, that J. L. Cronin, agent-telegrapher at Billings, Oklahoma, be paid under the call rule of the telegraphers' agreement for train order No. 369 issued on August 15th, 1940, and order No. 376 issued August 16th, 1940, both for trains originating at his station but which orders he was not permitted to handle, they having been instead given to and handled by employees not covered by the telegraphers' agreement."

EMPLOYES' STATEMENT OF FACTS: "Billings, Oklahoma, a one-man station, is located on the Ponca City branch approximately thirty miles from Enid, Oklahoma, a branch terminal point on the main line.

"Locomotive Crane 95238 being handled by a train crew was employed in repairing a bridge in the vicinity of Billings August 14 and 15, 1940, necessitating the use of train orders which should have been put out at Billings because it is a telegraph and train order station.

"However, on each of these two days the train crew commuted between Billings and Enid by automobile. In order to avoid a call to the agent-telegrapher at Billings these two days, as it would have been necessary to call him as his hours are 8:00 A. M. to 5:00 P. M., and the crane crew started to work at 8:00 A. M., the orders in question were put out at Enid and the telegrapher instructed to place them on the train register or in some other location for the train crew to get, then drive by automobile to Billings where the orders were to be executed. At the time the train crew got orders at Enid there was no telegraphers on duty. It may be noted the orders are dated the day before work was to be done.

"There is in existence an agreement between the Carrier and the Order of Railroad Telegraphers, bearing date of January 1, 1928, covering wages and working conditions of the classes of employes shown in the scope rule thereof, copies of which have been furnished to the Board."

POSITION OF EMPLOYES: "It is the contention of the General Committee that under conditions surrounding this case, the agent-telegrapher at Billings, Oklahoma, should have been called the morning of August 15th, and 16th, 1940, to take these train orders and paid for the call, instead of the carrier instructing that the orders be put out at Enid and delivered to the train crew there just because they were tying up at Enid over night. The rest of the crew on the crane tied up at Billings. This maneuver is too

gency, in which case the telegrapher will be notified and paid for the call.'

"We claim there was no violation of this article because the train orders were handled by an operator employed at a telegraph office (Enid) covered by the telegraphers' agreement, and by him delivered to the conductor.

"The carrier, therefore, did not delegate work belonging to a telegrapher to an employe of another craft not covered by the telegraphers' agreement, and the conductor did not become a telegrapher.

"There is nothing in the telegraphers' agreement which specifically provides that train orders for train crews must be delivered at a particular station or to a designated telegrapher. It does provide that 'no employe other than covered by this schedule (telegraphers) will be permitted to handle train orders at telegraph or telephone offices where an operator is employed.' An operator covered by this schedule (telegraphers) was employed at Enid and the train orders were handled by that operator as contemplated by Article 1(b).

"It is the established practice of years standing in cases of this kind to handle train orders as indicated, and this is the first claim of this character we have received from the employes. There is nothing in the rule of the telegraphers' agreement under which such a claim could be sustained. It is obvious there is no violation of Article 1(b), and, hence, claim for a call under Article 4(c) cannot be sustained.

"In further support of our contention we wish to quote the following from the Opinion of Referee Herbert B. Rudolph in Award 1305, Docket TE-1238, in which he also refers to Award 1145 of the Third Division:

"The claimants further contend that the section foreman used the telephone at Havelock to secure train lineups and handle other matter with the operator at Lincoln. However, it here appears as it did in Award 1145, that the information was obtained by the section foreman for his own use from telegraph operators employed under the prevailing schedule of rules. Award 1145 must govern this contention.'

"In the instant case the conductor of crane 95238 did receive 'from telegraph operators employed under the prevailing schedule of rules' train orders for his own use.

"The claim has no merit and should be denied."

OPINION OF BOARD: The carrier during the month of August, 1940 was operating a locomotive crane, No. 95238, on the line between Alcorn and Garber, Oklahoma. At the time here in question this was being used in the repair of a bridge near Billings, a one man station on that line, manned by the claimant as agent-telegrapher. At the conclusion of work on the nights of August 14 and 15, this locomotive crane tied up at Billings and the conductor and at least a part of the crew drove to Enid, which was the home of the conductor, a total of 30 miles, to spend the night. It was necessary to have train orders issued governing the movement of this equipment on the line. On the two occasions which are the subject of this complaint these orders were handled in the following manner: They were issued to the telegrapher at Enid and, to use the words of the Committee, one was "addressed to Northward trains at Enid" to be delivered to the conductor of the locomotive crane, and the other was "addressed to the conductor of locomotive crane No. 95238 at Enid." It is conceded that in both instances the orders were for the conductor and covered his authorization for work on the main track at or near Billings during the day between 7:30 A. M. and 7:30 P. M. The telegrapher at Enid was directed before he left his station at night to place these orders where they would be found by the conductor each morning when he started on his motor trip to Billings to commence his day's work.

The agent at Billings did not come on duty until 8:00 A. M. and the Committee contends that the reason for sending these orders through Enid was to avoid a call to the operator at Billings, for it was necessary that the orders should be delivered before his regular tour of duty commenced. The motive for this procedure is not, however, of importance. The real question is, did it violate the agreement between the Carrier and the employees of this department.

The Committee contends that the procedure here in question violates Article I (b) of their agreement; that Article reads as follows:

"HANDLING OF TRAIN ORDERS. 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, can be promptly located and is available, except in an emergency, in which case the telegrapher will be notified and paid for the call."

The purpose of this rule is well expressed in one of the early awards, No. 86, as follows:

"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. * * *"

The Committee claims that there was a violation of the rule by the Carrier in the manner of handling the orders at Enid. We shall discuss this later. The real basis of the claim is that the orders were to be executed at Billings and should have gone through that station, but the first impression of one reading the rule is that it restricts the Carrier only to the extent that work belonging to the telegraphers shall not go to outsiders and has by itself nothing to do with the allotment of work as among the employes of the designated class.

The Committee argues, however, with great sincerity that there are cases which decide otherwise, and it is pointed out to us that we should not deviate from these. It is urged, and we think with great force, that the meaning of a rule such as this should remain fixed and be understood by all concerned and that a procedure which may vitally affect the methods of operating a railroad should not be left in a state of flux. With that contention we agree and we have accordingly examined with great care the opinions in the different awards cited to see if they require a different interpretation of the rule than what seems to us to be justified.

The awards with uniformity have held that the words in the rule "handle train orders" mean something more than "copy train orders" and that there is a breach of the rule if the orders, after having been copied by the telegrapher, are entrusted for delivery to someone not included within the class covered by the agreement. One of the most frequent examples of such a violation is where orders are given to one train crew to be delivered to the train crew which is to execute them. Awards 86, 1096, 1167, 1168, 1170, 1304, 1456.

One of the most typical of these cases is Award 1096. The facts here show that there was a station at South Fontana at which the telegrapher was on duty between 9:00 A. M. and 6:00 P. M. At Bloomington, 5 miles away, there was another station where telegraphers were on duty all the time. During the hours when the telegrapher at South Fontana was off duty it was the practice for telegraphers at Bloomington to copy the train orders which were to be delivered to South Fontana and to give them to the engineer of the Westward freight in whose care they were addressed, who, in turn, delivered them to the train crews at South Fontana to whom they were addressed. It was maintained by the Carrier that the practice had been of

long standing and was in vogue when the rule was adopted. The opinion of the Board was, however, to the effect that the language of the rule, being clear and unambiguous, must control.

We cannot see how this case is an authority for the proposition claimed by the Committee that all orders to be executed at a certain station must be handled by the operator at that station. The orders were directed to South Fontana and the only question in the case was whether the delivery of them to the train crew at South Fontana was effected through the medium of those not included within the required class. In the case before us the orders were directed to the train crew at Enid who were to execute them at Billings, and they were received by that train crew at Enid. In Award 1096 the controversy was between telegraphers and outsiders. In the case now before us it would seem to be between two employees of the same class, one the operator at Enid, the other, the operator at Billings. The facts in the two cases are quite distinct unless we adopt the theory suggested by the Committee that the conductor transported the orders from Enid to Billings and delivered them to himself at Billings, and was therefore in the same category as the operating men who delivered the orders in Award 1096. But this would be to disregard the facts of the case and to set up a fiction in order to find a violation of the rule.

The facts in certain of the cases seem at first glance very close to those now before us, but we are of the opinion that a careful analysis will show that they are clearly distinguishable. See Awards 1167, 1168, 1304, 1456.

Award 1167 concerned the duties of the telegraphers at two stations, Coffeyville and Cherryvale. At Coffeyville the telegrapher was on duty from 9:00 A. M. to 6:00 P. M., at Cherryvale from 8:00 P. M. to 4:00 A. M. Train No. 73 left Cherryvale daily at 3:05 A. M. and arrived at Coffeyville at 3:50 A. M. It made a return trip as No. 74, leaving Coffeyville at 7:30 P. M., arriving at Cherryvale at 8:15 P. M. This operation was treated by the Carrier as one continuous trip and orders were delivered by the agent at Cherryvale not only covering the trip from Cherryvale to Coffeyville but for the return trip from Coffeyville to Cherryvale, in the latter case, being addressed "to train No. 74 at Coffeyville." It was held that this practice was a violation of the rule and the telegrapher at Coffeyville was held to be entitled to a call. The opinion treats the practice as, in form, the operation of two separate trains and takes pains to point out that there was not necessarily "identity of personnel of the train crews." In view of the fact that the delivery of the order might have been made by one train crew to another the principle involved is the same as in Award 1096.

Awards 1168 and 1304 involved the delivery of train orders by those not included within the agreement and are in principle the same as Award 1096.

Award 1456 concerned train orders for the return trip of a helper engine which assisted a train from Richmond to Glen Frazer. The orders were directed to the engineman of the helper engine at Glen Frazer, were delivered by the telegrapher at Richmond to the conductor of the train who delivered the orders to the engineman of the helper engine after the arrival at Glen Frazer. On these facts the principle involved would seem to be the same as in Award 1096.

Awards 709, 1166, 1170, and 1422 relate to practices with which we are not in this branch of the case concerned.

The operation of a railroad is an intensely practical matter and it is important that the carrier and employees who have a joint interest in the enterprise should be the architects of their own working agreements. They know the problems which must be met very much better than one sitting as Referee whose mind is strange to such work. It is, therefore, more than ever important that we should hold that rules which on their face are clear and explicit should not be amplified by engrafting on them qualifications not clearly required by their terms. Above all, we should remember that with

respect to a precedent it is the facts and the decision which count; that observations in an opinion should be read in the light of the particular facts there involved. They should not be torn from their context and viewed as abstract propositions to explain, to enlarge, or to restrict what the parties themselves have formulated as a rule for their guidance.

The rule in question is clear and explicit and we find in it nothing which requires that train orders shall be handled through one station rather than through another. The rule governs. Under the facts of this case there was no violation in sending the orders in question through the station at Enid.

The Committee contends that in the manner of the delivery of the orders at Enid there was a violation of the rule. Assuming but without deciding that such may be the case, this particular claimant cannot complain and is not entitled to be paid for the calls. We have shown that he had no exclusive right to this work and if there was a violation such as is complained of it concerns the operator at Enid and not the operator at Billings.

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 in directing the orders to the train crew at Enid and in sending them through that station the Carrier did not violate the agreement..

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of June, 1941.