

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Carl B. Stiger, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Atchison, Topeka and Santa Fe System that: (1) The position of non-telegraph agent at San Clemente, California, shall, effective October 23, 1939, until November 18, 1939, inclusive be considered reclassified to agent-telegrapher because of acts of the Carrier during that period in regularly issuing train orders to the telegrapher at Serra for delivering to trains at San Clemente, and instructing that their handling be completed by having a section foreman, who is not covered by the Telegraphers' Agreement, carry the orders Serra to San Clemente, and deliver them to the trains addressed; and (2) A rate for the agent-telegrapher, San Clemente, comparable with others in that class on that Division, be applied thereto; (3) Those who occupied San Clemente agency October 23, 1939, to November 18, 1939, inclusive, be compensated accordingly including pay at the overtime and call rate for such overtime as would have accrued to the reclassified position had not the violation occurred.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of December 1, 1938 is in effect between the parties to this dispute, copies of which are on file with the National Railroad Adjustment Board.

Effective September 19, 1932 the Carrier without conference and agreement removed the agent-telegrapher position at San Clemente from the Telegraphers' Agreement, substituting therefor what it termed a "resident agency."

By agreement October 28, 1936, following the issuance of Award No. 255 of the National Railroad Adjustment Board, Third Division, the agency at San Clemente was restored to the Telegraphers' Agreement (effective November 1, 1936) with a classification of small non-telegraph, rate of pay \$80.00 per month. Said rate was increased to \$90.20 per month effective August 1, 1937.

The current Telegraphers' Agreement, effective December 1, 1938, on page 48, lists, among other positions:

San Clemente	Agent—S. N. T.	\$90.20 per month
Serra	Telegrapher	.71 per hour

Both Serra and San Clemente are located on the carrier's main line Los Angeles southward to San Diego. The distance Los Angeles to Serra is 60.3 miles, to San Clemente 64.2 miles. The assigned hours of the Serra telegrapher were 9:00 P. M. to 6:00 A. M. with one hour for meal. The agent at San Clemente was assigned daylight hours, the exact starting time not readily available.

Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

This is the call rule of the Telegraphers' schedule and obviously comes into play in this case only at such time as the small non-telegraph agent at San Clemente is required to actually perform service in excess of his eight hour assignment, or is called to perform work outside of and not continuous with his regular work period. Neither of these conditions existed and the Employees' citation of these rules is therefore without merit.

Upon its presentation of the case the Carrier submits there has been no violation of schedule and the Board is respectfully requested to render an award denying the claim.

Carrier has not been served with a copy of the Employees' submission, consequently it is not informed with respect to the alleged facts, contentions and arguments which the Employees' ex parte submission may contain. Carrier, therefore, has dealt only with the contentions and allegations heretofore presented to it by the Employees, and such other matters as in its considered judgment are pertinent to the dispute. Carrier, however, reserves the right to submit evidence in rebuttal of any alleged facts, contentions and arguments made by the Employees in their ex parte submission, or to any other submission which the Employees may make to your Honorable Board in this case.

OPINION OF BOARD: The agency at San Clemente is included in the Telegraphers' Agreement, effective November 1, 1936, with classification of small non-telegraph. The assigned hours of the agent at San Clemente at the time in question were from 8:00 A. M. to 12 Noon and 1:00 P. M. to 5:00 P. M., and the hours of the telegrapher at Serra were from 9:00 P. M. to 6:00 A. M. San Clemente is 4 miles south of Serra.

From October 25, 1939 through November 18, 1939 a work train was in service two or three miles south of San Clemente at which station the train tied up each night. During said period respondent transmitted train orders to the telegrapher at Serra during his assignment addressed to the work train tied up at San Clemente with instructions to leave the orders before going off duty in the station waybill box to be picked up later by a section foreman who would carry them to San Clemente and deliver them to the conductor of the work train which went on duty at 7:00 A. M.

The Organization contends this practice of the Carrier during said period violated the scope rule of the agreement and Article 13 which reads:

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

All during said period the Carrier was using this small non-telegraph station for telegraph business and the operator was available or subject to call. As the position at San Clemente during said period was in fact agent-telegrapher, the employe, who was covered by the Telegraphers' Agreement, had the right to receive, copy, and deliver the train orders. The transmission and delivery of the train orders through the section foreman to the train crew at San Clemente violated the scope rule and Article 13 of the agreement.

A long line of awards of this Division not only sustain but compel the conclusion reached by the Board in this award, among which are Awards 86, 244, 245, 246, 255, 604, 709, 1096, 1166, 1167, 1168, 1169, 1261, 1281, 1284, 1303, 1304, and 1456.

In support of its position the Carrier cited its position in dockets covered by Awards 1167 and 1456, and in its behalf Award 1489 was cited.

Award 1489, in construing an "Handling Train Orders" rule identical with Article 13, held that the rule in question was clear and explicit and did not require that all orders to be executed at a certain station must be handled by the operator at that station. If, in the instant award, the conductor of the work train at San Clemente had obtained his train orders each day at Serra direct from the telegraph operator at that station the factual situation in the two awards would be substantially the same. But in this dispute the conductor of the work train received his orders at San Clemente which orders should, under the rule, have been handled by the operator at that station. Because of a different fact situation Award 1489 is not in conflict with and does not control this award. However, Award 1489 recognized the principles involved in Awards 86, 1096, 1167, 1168, 1304, and 1456 but held they were not applicable to the facts before the Board in said dispute.

Awards 1167 and 1456 sustain the claim of the Employees. In each award the Carrier members filed dissents which complained of the refusal of the Division to restrict the scope of the words to "handle train orders" and to construe Article 13 in harmony with and in view of the history of negotiations leading to its adoption.

The provisions in Article 13 that no employe other than covered by the schedule will be permitted to "handle" train orders means that the employe has the right to receive, copy, and deliver orders. Many awards of this Division have so construed this rule, which interpretation is in harmony with the scope rule, is sound, and should be and is adhered to by the Board. In Award 86 the Opinion states with reference to the rule:

"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 1489.

The Carrier members assert in the dissents in Awards 1167 and 1456 that they are contrary to the meaning of Article 13 as established by the intent of the parties who negotiated and agreed upon the article. Their construction of Article 13 is set out in the dissents and will not be repeated here. This construction of the rule was presented to and rejected by this Division in said awards which, following prior awards, held the article was clear and unambiguous and that it was unnecessary to go outside the agreement to discover the intent of the parties. Award 1456 states:

"* * *. Award 1096 held that where there was a conflict between the Agreement of the parties and the operating rules of the carrier the provisions of the Agreement must prevail. * * *. It was further held that the rule of the agreement (which was the same as Article 13 in this case) prevailed over the conflicting operating rule of the company although the practice of the carrier, there complained of, was of long standing and wide use. * * *"

The Carrier has heretofore repeatedly, but unsuccessfully, urged this Division to recede from its interpretation of Article 13. The Board is of the opinion that the construction this Division has consistently placed on the rule in a long line of awards (for a partial list see awards cited in this opinion) is sound and should be regarded as conclusive on this Division as an established precedent.

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 the scope rule and Article 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 19th day of February, 1942.

Dissent to Award 1713—Docket TE-1609

We disagree with the application here given Article XIII—Handling Train Orders, particularly the engrafting on its clear and explicit terms of the strained interpretations of the word "handle" found in former awards to the end of now attaching these progressively expanded meanings to this single word with a result contrary to the understanding of the parties and contrary to the intention of the tribunal originally promulgating the rule. The quite evident practical handling of the train orders here involved alone should have suggested the necessity for determination of the issue based upon discriminating consideration of the particular facts in conjunction with independent consideration of Article XIII rather than upon applications given the rule by former awards occurring under differing circumstances.

The history of the original promulgation of this Article definitely shows its purpose to have arisen from the complaint of the Telegraphers upon the growing tendency of Carriers to require train and engine service employes to handle their train orders, instructions, etc., direct with the train dispatcher by telephone rather than through the telegraphers, thus transferring telegraphers' work to these other employes not covered by the Telegraphers' Agreement. The purpose of Article XIII as then promulgated was to insure to telegraph employes the work of handling train orders to the extent and under the conditions stated by that Article. It was not intended thereby to transfer to telegraph employes the methods and work in connection with the delivery of train orders as always had been used and continued thereafter throughout the years to be used and performed by others than telegraphers.

Neither was it intended otherwise to expand the meaning of the word "handle" to limit the Carrier either as to the form or detail of handling train orders nor the station or stations where they shall be handled except that in such respects it were demonstrated that the clear and explicit prohibition intended when the parties negotiated and agreed upon the Article had been transgressed. See Award 1489.

Article XIII simply and directly protects telegraphers in their rights in the handling of train orders, exactly as specified, at offices where an operator is employed and is available or can be promptly located; with exception of an emergency, in which case the telegrapher will be paid for the call. The rights of telegraphers thus protected were rights they had previously

enjoyed, but were never intended to be extended to convey rights which had not accrued to them and to interfere with the operations of the Carrier in respect to effecting delivering of train orders, as now progressively culminated by this and preceding awards, to which reference has been made—notably Awards 1356, 1304, and 1166, with their accompanying dissents, and others.

This dissent is recorded against the continued unwarranted impediments imposed upon carrier operations by the new and unintended meanings attributed to Article XIII through the construction thereof found in this and the prior awards upon which reliance is placed, and we emphatically disagree with the concluding opinion of this award that the Division should now regard this construction as conclusive and as sound to the extent of constituting an established precedent.

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