

Award No. 1719
Docket No. TE-1611

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, Atchinson, Topeka & Santa Fe System, that the agent-telegrapher at Rialto, California be paid two calls, account train orders No. 26, April 3, 1940, and No. 30, April 17, 1940, having been sent from San Bernardino to Rialto by an employe holding no assignment at Rialto, and by him there delivered to the trainmen addressed at a time of day when Rialto telegraph office was closed.

EMPLOYEES' 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.

The current Telegraphers' Agreement, effective date December 1, 1938 which contains agreed-to rules, rates of pay, classifications, etc., page 47, among other positions, lists the following:

San Bernardino	Telegrapher-87 Operator	.83 per hour
Rialto	Agent-telegrapher	.89 per hour

San Bernardino is a terminal location. Rialto is located approximately four (4) miles west of San Bernardino.

Train order No. 26, April 3, 1940 was sent to San Bernardino "B" office addressed to Extra 3140 West at San Bernardino and to Extra 3154 East at Rialto or Fontana. Train order No. 30 April 17, 1940 was sent to San Bernardino "B" office addressed to Extra 3144 West at San Bernardino and Extra 3129 East at Rialto or Fontana. Order No. 26 was made complete 1:07 A. M. and order No. 30 at 1:58 A. M.

H. M. Swanson 87-operator, not employed in the San Bernardino "B" office, was instructed to secure the orders addressed to trains at Rialto or Fontana from the "B" telegraph office and make trips via automobile to Rialto to effect deliveries.

POSITION OF EMPLOYEES: The Telegraphers' Agreement reads in part:

Scope Rule

"This schedule will govern the employment and compensation of agent-telegraphers, agent-telephoners, telegraphers, telephone operators (except switchboard operators), towermen, levermen, tower and train directors, block operators, staffmen, and such agents and other employes as may be shown in the appended wage scale."

tory as it appears in Third Division Dockets TE-1062 and 1065. The Telegraphers' Organization has until only recently been consistent in its agreement with the Carrier's understanding that so long as an employee covered by the Telegraphers' Schedule is used to handle train orders there can be no violation of Article 13. Numerous revisions of the Telegraphers' Schedule, the latest being effective December 1, 1938, were effected through negotiations between the parties without any indication whatsoever that the Organization contended the rule meant otherwise. The Employees seek to deny the Carrier the right to stipulate the point at which train orders shall be received by telegraph employees and delivered to train service employees. Such a restriction of the Carrier's rights to operate its property and direct its employees is not contained in any rule of the Telegraphers' Agreement, and the Carrier submits that the Organization cannot show that such a restriction now exists or has ever existed in the agreements with The Order of Railroad Telegraphers. It seems inconceivable that after a telegraph service employee has handled the train orders in question to a completion, a further claim such as the instant one should be presented, claiming time for a second telegraph employee who performed no service whatever.

The Carrier is in complete agreement with and adheres to the views expressed in First Division Award 4232 that:

"There is a cardinal rule of interpretation of contracts to the effect that where an agreement is equally susceptible of two meanings, one of which would lead to a sensible result and the other to an absurd one, the former will be adopted. Another important rule is that conduct of the parties under the agreement over a period of time is evidentiary of their intent."

The Carrier also feels that the Third Division was correct in its statement that:

"The claim is a valid one only if supported by the rules of the Agreement, or, in case of doubt as to the meaning of the relevant rules, by the established practice thereunder."

as expressed in the "Opinion of the Board" in Third Division Award 1178 (Docket CL-1201). Neither the established practice, the rules of the Agreement cited by the Employees nor the understanding and conduct of the parties under the particular rules will lend support to the Employees' claim. On the contrary, such considerations definitely sustain the position of the Carrier and warrant a complete denial of the claim presented by the Employees.

The 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/or allegations which the Employees' ex parte submission may contain. The Carrier, therefore, has dealt only with the contentions and/or allegations heretofore presented to the Carrier by the Employees and such other matters as in its considered judgment are pertinent to the dispute. The Carrier, however, reserves the right to submit evidence in rebuttal of any alleged facts, contentions and/or allegations 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: Orders Nos. 26 and 30 were handled substantially in the same manner and under like circumstances. The opinion will refer only to the facts surrounding the handling of order No. 26.

An extra freight train was being moved eastward from Los Angeles to San Bernardino under train orders for April 3, 1940 which gave the train until 1:15 A. M. to reach Rialto, a station west of San Bernardino, and provided that it should not move eastward beyond Rialto and continue into San Bernardino unless it had encountered and passed a westward extra freight train lined up to depart from San Bernardino at 12:40 A. M.

The westward train being delayed in its departure from San Bernardino until 3:15 A. M., April 3rd, the train dispatcher at San Bernardino issued superseding train order No. 26 which required the westward train to remain at San Bernardino until 3:15 A. M. for the eastward train and released the eastward train from not progressing beyond Rialto after 1:15 A. M. if it could reach San Bernardino before 3:15 A. M.

Train order No. 26 was received and copied by the telegrapher on duty at San Bernardino and passed by him to another telegrapher who, using an automobile, delivered the train order to the train crew of the eastbound freight train at Rialto.

At the time the order was delivered the Rialto telegraph office was closed, that is, the telegrapher at that station was off duty.

The Committee alleges that the handling of the orders in the manner described violated the scope rule and Article 13 of the Telegraphers' Agreement effective December 1, 1938.

Article 13 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."

The agent-telegrapher at Rialto was available or could have been promptly located and, under the scope rule and Article 13, was entitled to handle the train orders. Awards 86, 245, 709, 1096, 1167, 1168, 1169, 1281, 1284, 1302, 1303, 1422, 1456, 1680 and 1713, Docket TE-1609. The record does not support the proposition of the respondent that the operator at Rialto was not available or subject to being promptly located within the meaning and purpose of Article 13.

Award 1489 cited in behalf of the Carrier holds that Article 13 does not require all train orders to be handled by the operator at the station they are to be executed. The award, however, does not hold or suggest that a telegraph operator is not entitled to handle train orders transmitted to and received at his station.

The Carrier stresses the fact that, though the order was not handled by the telegrapher at Rialto, it was handled by a telegrapher and not some other class of employes which satisfied Article 13. The Board is of the opinion the rule contemplates that all train orders at telegraph or telephone offices shall be handled by the operator at that office. Award 1169 states:

"* * * The carrier fixed the status of the station in question, denominating it a telegraphic one, and at all times important here assigned one telegrapher to the station. In such circumstances, what does the rule require? We have stated it often. Briefly, our holding has been that at all telegraphic stations train orders shall go through telegraphers, 'in usual course if on duty, and pursuant to "call" if off duty,' directly to train crews. The purpose of the agreement was to assure telegraphers employed by carriers the full fruits of their employment. Award No. 86. The gist of our present holding is, and the spirit of all our holdings on the question involved has been, to give recognition to the reasonable meaning of the agreement, into which the carrier, no less than the employe, competently entered."

The Carrier again requests this Division to adopt its restricted construction of the word in Article 13 "to handle train orders" and asserts that the above cited awards, and other awards of this Division construing the article, are unsound primarily because they fail to consider certain operating rules and the history of the original negotiation and adoption of the rule in deter-

mining the intention of the parties as to the extent of the work of this class within its scope and again urges this Division to adopt its construction of the rule repeatedly pressed on this Division for consideration in said awards and in the dissents thereto.

This Division has consistently rejected the Carrier's construction of the words "to handle train orders" and has again and again held that if operating rules are inconsistent with the agreement the rules must yield to the agreement, that Article 13 is clear and unambiguous and that it is unnecessary to go outside the agreement to determine the intention of the parties.

This Division is of the opinion that it should not now question the soundness of the established construction placed upon the scope rule and Article 13 by the said decisions relative to the principle involved in this dispute and must decline to overrule the said awards.

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 scope rule and Article 13.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of February, 1942.

Dissent to Award 1719—Docket TE-1611

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 1713, 1456, 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 not now question the soundness of the construction placed upon this rule as related to the principle here involved.

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