

Award No. 2926
Docket No. TE-2932

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

(Edward F. Carter, Referee)

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY

(Joseph B. Fleming and Aaron Colnon, Trustees)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, The Chicago, Rock Island and Pacific Railway, that Telegrapher F. N. Tynes, Haskell, Arkansas, shall be paid a call under the rules of the Telegraphers' Agreement, when on May 24, 1942, by direction of the Carrier, at a time he was off duty, train order and clearance cards were handled by the crew of extra 2315 South from Biddle to Haskell, and left attached to the train register at Haskell to be later picked up by the crew of Work Extra 1708, thereby depriving Telegrapher Tynes of the performance of the work of handling these train orders and clearance cards which work was properly his, and for which he was entitled to be paid a call.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of January 1, 1928, as to rules of working conditions and rates of pay is in effect between the parties to this dispute; the position of Agent-Telegrapher at Haskell, Arkansas, is listed in the agreement on which telegrapher F. N. Tynes is employed with assigned hours 8:30 A. M. to 5:30 P. M., one hour allowed for meals, daily except Sundays and holidays.

On Sunday, May 24, 1942, Work Extra 1708, was employed in the vicinity of Haskell. Train orders No. 213 with clearance cards addressed to this train were issued at the Biddle telegraph office with instructions that the orders and clearance cards be sent from Biddle to Haskell, by the crew of Extra 2315 South, a distance of approximately thirty miles, and left unattended in the waybill box or attached to the train register at Haskell, to be later picked up by the crew of Work Extra 1708. The orders and clearance cards were handled as directed and were picked up by the crew of the Work Extra during a time telegrapher Tynes was off duty.

The Committee, through Local Chairman T. Ellis, directed a letter to Division Superintendent Adams, May 25, 1942, requesting that Telegrapher F. N. Tynes be paid a call because he was not privileged to perform the work of handling the orders and clearance cards in question at his station. Superintendent Adams declined to authorize payment and appeal was taken to higher officers who sustained the decision of the Superintendent.

POSITION OF EMPLOYES: Haskell is a telegraph station at the junction of the Hot Springs and El Dorado lines. On May 24, 1942, Work Extra 1708 was employed in switching service on the Hot Springs line between Haskell and Hot Springs. After finishing the work for the day, it was desired that this train return to Biddle for the night, but, due to certain operating rules, and,

of the first working rules agreement with the Telegraphers, and has been uniformly applied and followed throughout the entire period up to this date, can safely be accepted by the Carrier as actually constituting an agreement between the Telegraphers' Organization and the Carrier if such rules are subject to change in interpretation without change in the language of the rule, or if a request for a change in the application of the rule may be submitted to this Board and such new and completely different interpretation upheld.

OPINION OF BOARD: Claimant Tynes was assigned to Haskell, Arkansas, as agent-telegrapher, regularly working from 8:30 A. M. to 5:30 P. M., daily except Sundays and holidays. May 24, 1942, the date involved in this dispute, was on a Sunday on which date Tynes was assigned no duties. On this day, Work Extra 1708 was employed in the vicinity of Haskell. After completing the day's work, it was desired that this train return to Biddle, Arkansas, for the night. Train orders and clearance cards were necessary before it could occupy the tracks between Haskell and Biddle. Train order No. 213 with clearance cards addressed to this train were issued at the Biddle telegraph office and sent from Biddle to Haskell, a distance of thirty miles, by the crew of Extra 2315 South and left attached to the train register at Haskell where they were picked up by the crew of Work Extra 1708 at a time when Telegrapher Tynes was off duty. The claim is that Tynes be paid a call because he was not privileged to perform the work of handling the train orders and clearance cards at his station.

The claim is based on the Scope Rule and Article 1(b) of the current Agreement, the latter of which provides:

"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 decision necessarily rests upon the interpretation to be placed upon the words "to handle train orders" contained in Rule 1(b).

The contention is here advanced by the Carrier that the phrase "to handle train orders" means only to receive and copy train orders. This is contrary to the interpretation placed upon this language by many awards of this Division. To review them all again would be a work of supererogation. We think the phrase "to handle train orders" contemplates receiving, copying and delivering them to the train crews which are to execute them. Awards Nos. 86, 1166, 1713, 1878 and 1879. That the proper interpretation of this rule has been given the most serious consideration by this Board is evidenced by the many vigorous dissents filed by the Carrier Members. The phrase, however, has been interpreted as we have herein stated in so many awards by so many learned referees that it must be accepted as a meaning to be generally applied in all collective agreements arising under the Railway Labor Act in which the words appear. Unless such an interpretation so generally established by the awards of this Division are to be accepted and applied in the adjustment of disputes arising out of Rule 1(b) and similar rules, the purpose of the Railway Labor Act will be seriously restricted. A time should come when matters of this kind should be considered as finally settled until such time, at least, as they are changed by negotiation or mediation. We think that time has come irrespective of the wide differences of opinion between the carriers and the organizations with reference thereto.

The Carrier asserts in the present case that there are controlling considerations that remove this case from the operation of the rule. Such matters are of course properly before the Division.

The Carrier alleges that in the interpretation which we have given the rule destroys a practice evidenced by the operating rules of this carrier which has been in existence for 45 years or more. We think this is a correct statement of fact in which the proper answer is supplied in Awards 1456 and 1713, the effect of which is that where there is a conflict between the collective

agreement and the operating rules of the Carrier, the provisions of the former must prevail. This was held so even if the conflicting operating rule of the carrier and the practice previously employed, were of long standing and wide use. Certainly a past practice cannot affect the applicable agreement other than to demonstrate the intention of the parties where the agreement is ambiguous or indefinite. Award No. 561. No ambiguity or indefiniteness exists here. If the parties to the agreement had intended to limit the duties of the telegraphers to receiving and copying train orders, it could have been done by the simple expedient of using those words. The words used carry a broader meaning consistent with the interpretation that this Division has placed upon them.

The Carrier next urges that the interpretation is contrary to the intent of the parties as evidenced by their actions over a long period of years subsequent to the adoption of Rule 1(b). The applicable rule is that a continuing violation of a rule will not change or diminish its binding effect although acquiescence in respect to such conduct may operate as an estoppel upon the claimant from recovering for the period prior to the time the violation was called to the attention of the carrier. Awards Nos. 2635, 1518 and 561. These awards adequately answer the Carrier's argument on the question or erroneous construction mutually indulged in.

We conclude that as Telegrapher Tynes was available to handle the train orders and clearance cards in accordance with Rule 1(b) that he should have been called for that purpose. The failure of the Carrier to so do constitutes a violation of the Agreement.

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 Employees involved in this dispute are respectively carrier and employees 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 current Agreement as alleged by Claimant.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 20th day of June, 1945

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Dissent filed to Award 1713 reflects our position then and now with respect to the provisions of Article 1(b), in substance the same as Article XIII, there involved.

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