

Award Number 3126

Docket Number TE-3091

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD COMPANY
(OHIO CENTRAL LINES)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on New York Central Railroad, line west of Buffalo, that E. R. Smith, regularly assigned 2nd trick clerk-telegrapher at Kenton, Ohio, be paid a call under Article 22 of the Telegraphers' Agreement account engineman Livingston handling train order No. 72 by means of the telephone at the north switch of the southward siding at Kenton, Ohio, direct from the train dispatcher, on July 29, 1944.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date February 1, 1943, as to rules of working conditions, and December 27, 1943, as to rates of pay, is in effect between the parties to this dispute.

A continuously operated train order office is maintained at Kenton, Ohio, consisting of 1st, 2nd and 3rd trick clerk-telegrapher positions, and are covered by said agreement. Clerk-telegrapher E. R. Smith is regularly assigned to the 2nd trick clerk-telegrapher position at the Kenton train order office, with assigned hours 4:00 p.m. to 12:00 midnight.

On the afternoon of Thursday, July 29, 1944, telegrapher Smith had received several train orders from the train dispatcher for delivery to the northward 2nd section of freight train No. 95. Before all of these train orders and clearance cards could be completed for delivery, 2nd No. 95 arrived at the Kenton office and had run half way by the office where it stopped for the delivery of the train orders by telegrapher Smith.

Among train orders delivered was train order No. 68, giving 2nd No. 95 the right over passenger train 1st No. 8 to Blanchard, a point seven miles north of Kenton. As 2nd No. 95 had stopped at Kenton to receive these train orders, and owing to an upgrade, it could not reach Blanchard without delaying 1st No. 8, 2nd No. 95 was put in on the southward siding at Kenton for 1st No. 8 to pass and for a helper engine to push it over the grade.

When 2nd No. 95 had pulled in on the siding engineman Livingston called the dispatcher by means of the telephone in a booth at the north switch, who gave engineman Livingston train order No. 72 direct by means of the telephone annulling train order No. 68 without calling upon telegrapher Smith to perform this work.

In the Third Division Awards, 1167, 1820, 1878, 2666, 2817, and 2867 and in numerous other awards in which the Board outlined its position, covering claims involving train orders handled by other than telegraphers, a major factor supporting the affirmative awards has been that the agreement was violated because train orders were handled when the telegrapher was NOT on duty.

In no single instance, to the best of our knowledge, after extensive review of Third Division Awards, has a claim yet been sustained for additional payment to a telegrapher who was on duty at the time an employe not subject to the Telegraphers' Agreement, handled a train order.

This principle is further supported by the Board in Third Division Award 1752, wherein Referee Carl B. Stiger, speaking for the Division, sustained claim for violation of the Telegraphers' Agreement when Section Foreman on the A. T. & S. F. Rwy. Co., secured line-ups by telephone direct from the dispatcher, but in the Opinion of Board, stated, in part,—

"No claim for a call is sustained where the section foremen secured line-ups at a time when the agents were on duty." (Emphasis added).

In the instant case, claimant Smith was on duty at Kenton Station at the time engineer Livingston copied train order No. 72 at the booth phone located about 6000 feet north of the telegraph office in which the claimant is employed.

To grant the request of the employes in this case would inaugurate new practices on this railroad, and, in effect, would be the equivalent of granting a new rule. The claim of the employes is directed toward securing a revision of the existing rules which, if granted, will restrict the carrier from adjusting operating activities to the ultimate end of efficient and economical operation.

CONCLUSION:

1. The claim is presented because of conditions which could have been avoided by the claimant.
2. The rules relied upon by the employes do not support the claim because no work was performed by the claimant outside of the assigned hours of his regular position.
3. There was no violation of any rule of the Agreement.
4. There are no rules that support the claim, which is entirely unjustified, unsupported by contractual provisions and totally without merit, and should be denied.

OPINION OF BOARD: Assuming, which we need not decide, that in the instant case a train order was copied by an employe outside the Agreement, in violation of Article 22, yet Claimant is not entitled to an award because of the fact that he was on duty at the station at the time of the alleged violation.

Article 22 provides:

"No employes other than covered by this agreement 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."

Article 5 (Call Rule) provides:

"Employes notified or called to perform work not continuous with the regular work period will be allowed a minimum of two hours' pay at time and one-half for two hours' work or less and time and one-half thereafter on the minute basis."

Reading these two rules together, it seems clear to us that it was not intended that an employe on duty should be entitled to the penalty of the call.

Claimant lost nothing by reason of the claimed violation. Had he handled the train order in question he would have been entitled to no additional pay.

There have been numerous awards holding that an employe is entitled to a call when off duty and available when train orders have been copied by employes not within the agreement. See recent Awards 3114, 3116. However, no award has been called to our attention, nor have we found any, holding that an employe is entitled to a call, for a violation of this rule, if on duty at the time of the violation. Compare Award 1752.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of February, 1946.