

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MACON, DUBLIN AND SAVANNAH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Macon, Dublin and Savannah Railroad Company, that Clerk-operator R. L. Powell, regularly assigned at Dublin, Georgia, with hours 8:00 A. M. to 5:00 P. M., shall be paid for calls under Rule 8 of the Telegraphers' Agreement, when, on February 2nd, 9th, 10th, and 11th, 1945, the Carrier permitted or required conductors to receive and copy train orders at the Dublin station at a time when Clerk-operator R. L. Powell was not on duty; additionally shall be paid a call in each instance for subsequent orders copied at Dublin, by conductors or other parties not covered by the Telegraphers' Agreement at a time Clerk-operator Powell was not on duty but available for call.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date February 1, 1941, as to rules and working conditions is in effect between the parties to this dispute.

On the dates stated in the claim, at a time when Clerk-operator Powell was not on duty but subject to call under Rule 8 of said agreement, the Carrier permitted or required conductors to receive and copy train orders direct from the train dispatcher by use of the telephone at the Dublin station for the movement of their own trains.

Clerk-operator Powell was readily available for call on the days involved for the purpose of performing this communication service at his station, but was not called by the Carrier.

Letter rejecting Clerk-operator Powell's claims for call herewith quoted:

"MACON, DUBLIN & SAVANNAH RAILROAD COMPANY

"Macon, Ga., February 19, 1945.
File—163

"Mr. R. L. Powell,
Clerk-Operator
Dublin, Ga.

"Your time tickets dated February 2, 9th, 10, and 11th, claiming 2 hours in each case account of conductors on train 89 copying orders at Dublin on these dates, making claim under scope rule, has been cut out.

ORDER OF RAILROAD TELEGRAPHERS, dated September 10, 1940, addressed to General Manager J. W. Sexton of the MACON, DUBLIN & SAVANNAH RAILROAD COMPANY.

9. Continuously since 1919 it has been the practice on the property of the Carrier for conductors to copy train orders, when necessary or desirable, at non-telegraph or telephone stations, including telegraph stations where operators were not on duty. This was the practice on February 1, 1941, when the Agreement involved in this proceeding became effective, and it is still the practice. No claim has been filed by any employee alleged to be affected except that presented to the Board in the instant case.

In support of this statement, there is submitted as Exhibit 2, an affidavit of R. A. Williams, General Superintendent, dated September 9, 1946.

POSITION OF CARRIER: It is the position of the carrier that—

1. At the time the Agreement of February 1, 1941 was negotiated and signed, there was an existing practice, in effect since 1919, whereby conductors copied train orders, when necessary or desirable, at non-telegraph or telephone stations, including also telegraph stations where operators were not on duty.

2. THE ORDER OF RAILROAD TELEGRAPHERS requested proposed Rule 21, which would have written this practice out of existence. The Rule was declined by the management, and the Agreement effected without any such rule being incorporated therein, whereby the Organization and the Carrier necessarily agreed that the practice be continued.

3. There is nothing in the Scope Rule that writes the foregoing practice out of existence or gives any basis for the claim here submitted to the Board.

4. THE ORDER OF RAILROAD TELEGRAPHERS has informed the Carrier that it relies upon Supplement 13 to General Order 27 of the Railroad Administration, with special reference to Interpretation No. 4 to that Supplement. Reliance is also placed by THE ORDER OF RAILROAD TELEGRAPHERS upon Awards 86, 602, 604, 709, 757, 1096, 1166, 1167, 1168, 1169, 1170, 1271, 1273, 1274, 1275, 1281, 1282, 1283, 1284, 1302, 1305, 1456, 1563, 1713, 1720, and 1983 of the Third Division of the National Railroad Adjustment Board. All of these awards, as well as Interpretation No. 4 to Supplement 13 of General Order No. 27 of the Railroad Administration are predicated upon the existence of a rule of the carrier proposed by THE ORDER OF RAILROAD TELEGRAPHERS as Rule 21 when the Agreement of February 1, 1941 was negotiated. But, as heretofore pointed out, that proposed rule was not written into the contract, nor was any equivalent thereof put into the Scope Rule, so that none of the awards nor interpretations herein referred to as being relied upon by THE ORDER OF RAILROAD TELEGRAPHERS is applicable, or in any way sustains the claim submitted.

5. THE ORDER OF RAILROAD TELEGRAPHERS is here proceeding as though it had been successful in having its proposed Rule 21 written into the Agreement. Not having been successful in getting that Rule written into the Agreement at the time the Agreement was negotiated, under the auspices of the National Mediation Board, the Board is now requested, by awards, to rewrite the Agreement so as to include such a rule. The Carrier submits that the Board has no jurisdiction to rewrite the existing Agreement, and that to sustain the claim presented here would be in direct conflict with the Agreement, invalid, and legally unenforceable.

6. The claim should be denied.

OPINION OF BOARD: This Board has on three separate occasions considered disputes which involved the same question presented by this Docket. Awards 3114, 3521, 3522. In each of these Awards it was held that the work of receiving and copying train orders direct from the dispatcher by telephone

was of such a character that it belonged exclusively to the telegraphers. That this was true even in the absence of the so-called Train Order Rule, and even though it were contrary to a long established practice on the Carriers there concerned. We feel bound by these Awards (see Memorandum to Award 1680), and find nothing in the facts or the rules relied upon in this dispute to distinguish it from the cited 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 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1947.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

INTERPRETATION NO. 1 TO AWARD NO. 3602

DOCKET TE-3500

NAME OF ORGANIZATION: The Order of Railroad Telegraphers

NAME OF CARRIER: Macon, Dublin and Savannah Railroad Company

Upon application of the representatives of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

Employees seek an interpretation of Award 3602. In that Award the claim of Clerk-operator Powell was sustained, and has now been paid, for calls on certain specific dates. In addition claim was sustained for "a call in each instance for subsequent orders copied at Dublin by conductors or other parties not covered by the Telegraphers' Agreement at a time when Clerk-operator Powell was not on duty but available." By this application for an interpretation of the Award it is sought to have this Board declare that in approximately three hundred thirty instances Mr. Powell was "unavailable" when train orders were copied at times when he was not on duty. As disclosed by the application and the response thereto the question of Mr. Powell's availability is dependent upon sharply contested questions of fact. We do not believe that the Board should pass upon these disputed fact questions under the guise of an interpretation of the Award. To interpret means to explain or define, it does not mean to pass upon or decide disputed questions of fact. Nor is the procedure seeking an interpretation such that it lends itself to an intelligent decision of such facts. The Railway Labor Act, Sec. 3 (m), provides, "In case a dispute arises involving an interpretation of the Award the division of the Board upon request of either party shall interpret the Award in the light of the dispute." There is no question of interpretation presented by this application. Both sides to the dispute understand the Award and its meaning. The dispute is a dispute as to the facts and not a dispute as to the meaning of the Award.

Referee Herbert B. Rudolph, who sat with the Division as a member when Award No. 3602 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1948.

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