Award No. 4259
Docket No. TE-4193

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis Southwestern Railway Lines, that the terms of the Telegraphers' Agreement were violated by the Carrier when it permitted or required the conductors in charge of a mowing machine to copy the following train orders by telephone direct from the train dispatcher at blind sidings where no operators are employed, and on the dates specified:

Train Order No. 30, copied by Conductor Vickers on June 25, 1947, at Cookville, a blind siding;

Train Order No. 40, copied by Conductor Vickers on June 26, 1947, at Simms, a blind siding;

Train Order No. 65, copied by Conductor Davis on October 23, 1947, at Simms, a blind siding;

Train Order No. 50, copied by Conductor Davis on October 24, 1947, at Darden, a blind siding;

and that the senior employe under the Telegraphers' Agreement idle on these days shall be paid a day's pay of eight hours on each of these days on which the Carrier improperly permitted or required these conductors not under the Telegraphers' Agreement to copy these train orders at these points.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date December 1, 1934, as to rates of pay and rules of working conditions is in effect between the parties to this dispute.

For the purpose of cutting grass and weeds along its track, the Carrier on June 25 and 26, 1947, and October 23 and 24, 1947, had in operation on its line between Texarkana and Mount Pleasant, Texas, a so-called mower, a machine with mower attachments on each side, mounted on a push car and towed by a motor car. This machine, being too heavy to lift from the track, was operated as a work train under the protection of train orders and was in charge of a conductor and one brakeman, in addition to the crew operating the machine.

On the dates and at the stations shown in our statement of claim, the Carrier required or permitted the conductors, employes not under the teleg-

Mediation Board. Under such conditions, if a decision were rendered that the limitations specified in Rule 1-2 actually are meaningless and of no effect because of greater right implied in the rules to handle all train orders regardless of the point involved, apparently the results would be far-reaching indeed. No doubt it would affect other roads on which there has been no dispute regarding the matter, and give employes on such roads much greater rights without negotiation and agreement than employes on other roads secured through rules restricting the copying of train orders at blind sidings. No doubt conditions requiring use of telephones at outlying points are different on the different roads, as the restrictions agreed to on the few roads which have agreed to restrict the use of such telephones have not been uniform by any means. Of course, recognition of such local differences was one of the principal reasons for the Railway Labor Act reserving the making and changing of rules to the individual roads and the employes thereon, instead of providing a board with power to make rules on a national basis, as the USRR Labor Board did.

As previously set forth, the Employes endeavored to secure a rule on this road that would limit the use of telephones by train crews at outlying points, but the limitations they desired were so restrictive that the Carrier declined to agree. They now attempt to secure the change by award of this Board.

The rules are plain, and as pointed out above, do not support the claim. Therefore, Carrier respectfully requests that claim be denied.

Exhibits not reproduced.

OPINION OF BOARD: This is a claim on behalf of the senior employe under the Telegraphers' Agreement, who was idle on June 25th and 26th and on October 23rd and 24th, 1947, for pay for each of said four days. The Claim is based on the undisputed fact that on each of said days the conductors in charge of mowing machines attached to work trains each copied one train order received from the dispatcher by telephone while said work trains were on blind sidings where no operators were employed or offices maintained.

The Claimant relies upon Article 1. (Scope); Article 2, (Basic Pay); and Article 28, (Rate of Pay), of the Agreement which became effective on December 1, 1934. Said Article 1 provides, among other things, that:

> "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 employe will be paid for the call."

It has been stated to us on behalf of the Claimant that if this Claim is not sustained there will be nothing to prevent the Carrier from having employes not covered by the Agreement, and outsiders, perform telegrapher work at any point where an office is not and has not been located; and that if this can be done for four days it can be carried on indefinitely.

Award 2817 has been cited as involving comparable rules and facts. Since the Opinion in that case was written by the same Referee that is sitting here, it deserves more than passing notice. After pointing out that "merely incidental telegraphic or telephonic operations or those occasioned by emergencies or unforeseeable contingencies may not, under the particular facts, be regarded as within the scope of the agreement," we said: "The facts of this case do not present a situation of chance calls or of a crew becoming 'dead' at a blind siding because of a lack of orders. The record discloses that nightly headquarters were established for the work train at Nunez and that during the period involved, short as it was, (three days), the conductors received six train orders and three daily line-ups, besids using the telephone several times each day to ascertain when certain trains might be expected to arrive."

The quoted language presents quite a different picture from what we have here. While it is sometimes difficult to distinguish cases on the basis of the facts involved, we are inclined to the view that the services performed by the conductors in the instant case should be regarded as permissably incidental, rather than as unwarranted invasions of the Telegraphers' field. Factually, the Claim here relates to two sets of disconnected incidents—one occurring in June and the other in October. When so regarded, we have the conductor copying a single order on each of the two consecutive days. That, in our opinion, is insufficient to establish a breach of the Agreement; and such a conclusion is not in conflict with what was said in Award 2817, when viewed in the light of the facts with which we were there dealing.

Our conclusion in this case is further fortified by the fact that the record discloses several unsuccessful efforts on the part of the Organization to negotiate modifications of the Rules which, had they been successful, would have specifically governed a situation of this character.

For example, on February 6, 1938, the Organization's General Chairman proposed the adoption of the following formula to the Carrier's General Superintendent:

> "Employes other than those covered by the Telegraphers' Agreement will not be permitted to use the dispatchers' telephone except in case of emergency. The definition of emergency to mean wrecks, washouts, or other unforeseen situations where life and property are in jeopardy."

This suggested modification of the Rules was not acceptable to the Carrier, and it is not within the competency of this Board to make or modify rules for the parties. There is no occasion for the apprehension expressed on behalf of the Claimant, however, to the effect that a denial of this Claim will open the door to widespread abuses. This Board has always endeavored to interpret rules so as to preserve their purposes and the intent of the parties. Award 2817 is evidence of that fact.

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 evidence does not establish that the Carrier violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of January, 1949.