

Award No. 5086

Docket No. TE-5037

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna & Western Railroad Company that:

1. The Carrier violated provisions of the Telegraphers' Agreement when and because it required or permitted Conductor Lynch, Extra 1261 South, to copy Train Order No. 102 at Galena, 4:40 A.M., February 21, 1948; in consequence thereof the Carrier shall now pay to R. J. O'Neil, an idle extra employe, a day's pay, or \$10.04; and
2. The Carrier violated provisions of the Telegraphers' Agreement when and because it required or permitted Trainman Brennan, Train No. 7, to copy Train Order No. 216 at West Henryville, 10:31 P.M., January 17, 1948; in consequence thereof the Carrier shall now pay to Paul Rushin, an idle extra employe, a day's pay, or \$10.04.

EMPLOYES' STATEMENT OF FACTS: An Agreement by and between the parties, referred to herein as the Telegraphers' Agreement, effective November 1, 1947, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Conductor Lynch in charge of Extra 1261 South at 4:40 A.M., February 21, 1948, was required to copy Train Order No. 102 at Galena. The Organization claimed a violation of contract and a day's pay in behalf of R. J. O'Neil, an idle extra employe. The \$10.04 represents a day's pay at the established rate of the agent-operator position at Galena which had been previously declared abolished. The Carrier denied the claims.

Trainman Brennan, a member of the train crew on Train No. 7 was required to copy Train Order No. 216 at West Henryville, 10:31 P.M., January 17, 1948. The Organization claimed a violation of contract and a day's pay in behalf of Paul Rushin, an idle extra employe. The \$10.04 represents a day's pay at the established rate of the agent-operator position at West Henryville which had been previously declared abolished. The Carrier denied the claims.

POSITION OF EMPLOYES: As reflected in Item 1 of the Statement of Claim, the Carrier required or permitted Conductor Lynch, in charge of Extra 1261 South, to copy Train Order No. 102 at Galena 4:40 A.M., February 21, 1948. The Order reads:

Article 3, current agreement with Telegraphers, reads as follows:

"ARTICLE 3—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 effective date of this rule on the Bangor and Portland Branches is April 1, 1948."

Carrier's record shows that West Henryville Tower was closed and Towerman discontinued June 19, 1942.

The above-quoted Article 3 was not violated because there was no operator employed at West Henryville on January 17, 1948.

The Employes are requesting here that Paul Rushin be paid a day's pay under Article 12 of the current agreement with the Telegraphers. Article 12, Classification of Employes, New Positions, etc., reads as follows:

"(a) Where existing payroll classification does not conform to Article 1 employes performing service in the classes specified therein shall be classified in accordance therewith.

(b) When the duties and responsibilities of any position are substantially changed, the rate of pay may be adjusted by negotiation between the Company and the General Chairman in general conformity with positions of the same class in that seniority district.

(c) When new positions are created, rates of pay will be fixed by mutual agreement between the Company and the General Chairman in general conformity with those of existing positions of similar duties and responsibilities in the same seniority district.

(d) Established positions shall not be discontinued and new ones created under the same or different titles covering relatively the same class of work which will have the effect of reducing the rates of pay or evading the application of these rules."

This article has no application, in view of Article 3, which controls this case.

That rule is a specific rule and provides that no employe other than covered by the Telegraphers' 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.

In the instant case, the train order was handled by the dispatcher direct with the trainman. If at the time and point at which the train order was received there was an operator employed, there is no question that the operator employed at that point would have been paid a "call" under Article 3, above quoted.

That, however, is not the case here.

For reasons stated above, it is respectfully requested that the claim be denied.

OPINION OF BOARD: On February 21, 1948, Conductor Lynch in charge of Extra 1261, was required to copy Train Order No. 102 at Galena, a station where an operator was not maintained. The claim is for a day's pay for the senior idle extra telegrapher.

On January 17, 1948, Trainman Brennan of Train No. 7 was required to copy Train Order No. 216 at West Henryville, a station where an operator was not being maintained. The claim is for a day's pay for the senior idle extra telegrapher.

The Carrier contends, among other things, that the applicable train order rule applies only to telegraph and telephone offices where an operator is employed and is available or can be promptly located. It is true that the rule provides the penalty to be applied only under the conditions therein shown. Telephone operators, other than switchboard operators, are included within the scope of the Telegraphers' Agreement. The telephone work thereby reserved to telegraphers has been determined as that required to be performed in transmitting or receiving of messages, orders or reports of record by telephone in lieu of telegraph as the latter was historically and traditionally performed. Award 4516. A train order is a message, order or report of record within the meaning of the rule, the transmission of which is reserved to telegraphers.

The record discloses that the two train orders in question were received from the dispatcher by telephone by the conductor and trainman respectively. Traditionally and historically, a conductor or trainman could not have received train orders from the dispatcher at a point where a telegrapher was not maintained. A Morse-code telegrapher would have been required to communicate with the dispatcher, consequently, it was work reserved to telegraphers. The Carrier relies upon that part of Award 4516 dealing with Part 4 of the claim. We point out that Part 4 of the claim in that case was denied for the reason that the use of the telephone there complained of was in lieu of a personal trip or of messengers' service and not in lieu of work historically and traditionally performed by a telegrapher.

The copying of a train order by a conductor or trainman which was communicated by telephone by the dispatcher at a point where a telegrapher is not maintained, is a violation of the scope of a telegraphers' agreement which reserves telephone work to telegraphers. Awards 1220, 4516, 4577.

The claim of the Carrier that there was not a telegrapher available to do the work has no merit. See Award 4577. An affirmative award is in order.

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

Claims (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1950.