

Award No. 5087

Docket No. TE-5038

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter—Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA AND 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 the terms of the Telegraphers' Agreement when and because on July 15, 1948, it issued train Order No. 3 at Plymouth Junction addressed to Engine 481 at Northumberland which governed the movement of Extra 481 Northumberland to Hanover Yard and which was carried into Northumberland from Plymouth Junction by Engineer Search on Extra 464; in consequence thereof Agent-Operator J. W. Blud, Northumberland, shall be paid for a "call" in accordance with Article 5(a) of the Telegraphers' Agreement; and

2. The carrier violated the terms of the Telegraphers' Agreement when and because on November 11, 1948, it issued train Order No. 109 at Chenango Forks addressed to Engine 730 at Norwich, which governed the movement of Extra 730 Norwich to Utica and which was carried into Norwich from Chenango Forks by Extra 1244; in consequence thereof Clerk-Operator O. L. Chadwick, Norwich, shall be paid for a "call" in accordance with Article 5(a) of the Telegraphers' Agreement.

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

Train Order No. 3 dated July 15, 1948, made complete at 2:46 A.M. addressed to Engine 481 at Northumberland to be carried from Plymouth Junction to Northumberland by Extra 464 and to govern the movement of Extra 481 Northumberland to Hanover Yards was issued at Plymouth Junction.

Train Order No. 109 dated November 11, 1948, made complete at 7:51 P.M. addressed to Engine 730 at Norwich, to be carried from Chenango Forks to Norwich by Extra 1244, and to govern the movement of Extra 730 Norwich to Utica, was issued at Chenango Forks.

Plymouth Junction and Chenango Forks are continuously open stations. Norwich and Northumberland are closed a portion of the 24-hour period. The

The reason engine 730 was operated on the head end of BU-21 from Norwich, rather than being cut into the train behind engine 1244, was that the 730 was a small, light weight engine.

For reasons stated above, Clerk-Operator O. L. Chadwick is not entitled to "call" as claimed, and it is respectfully requested that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 15, 1948, Train Order No. 3 was issued and addressed to Engine 481 at Northumberland to be carried from Plymouth Junction to that point by Extra 464. It governed the movement of Extra 481 from Northumberland to Hanover Yards. The second claim is based on Train Order No. 109 issued at Chenango Forks on November 11, 1948. It controlled the movement of Extra 730 from Norwich to Utica and was carried from Chenango Forks to Norwich by Extra 1244. Plymouth Junction and Chenango Forks are continuously open stations, Norwich and Northumberland are not. The two train orders in question were issued at times when operators were not on duty at the two latter stations.

The record shows that Train Order No. 3 was delivered to Engineer Search, the engineer operating Engine 464 to Northumberland. At that point, he assumed control of Engine 481 and brought it back to Hanover Yard. It will be noted that when Train Order No. 3 was delivered to Engineer Search at Plymouth Junction to be carried and delivered to Engine 481, it was there delivered to the engineer of Engine 481 for the reason that Engineer Search was also the engineer on Engine 481 from Northumberland to Hanover Yards.

As to Train Order No. 109, it appears that Engine 730 was needed at Utica. It was attached as lead engine on Train BU-21 with Engine 1244, double heading as Extra 730 from Norwich to Utica. The conductor on Train BU-21, Extra 1244, was in charge of the train from Chenango Forks to Utica and the engineer of Engine 1244 remained in charge between these two points.

This Division has repeatedly held that the handling of train orders within the contemplation of the ordinary train order rule such as we have here, means that the receiving, copying and delivering of train orders is reserved to telegraphers. Awards 2926, 4770. The handing of a train order by a telegrapher to one train crew to be delivered to another train crew at another station or point generally constitutes a violation of the Telegraphers' Agreement. But in the case before us the Carrier asserts that the rule does not apply for the reason that there was an identity of personnel of the train crews who were to execute the train orders. The scope of the train order rule in the Telegraphers' Agreement is not dependent upon the personnel of the train crews who are required to execute the train orders. Assuming that as to Train Order No. 3 that the crews of Extra 464 and 481 were identical, when Engineer Search of Extra 464 carried a train order from Plymouth Junction to Northumberland to be executed by Extra 481 at the latter point, he was not performing a duty required of the engineer of Engine 464 but, on the contrary, he was performing the work of a telegrapher in delivering a train order to Extra 481 which was to be executed at Northumberland. The train order was addressed to Extra 481 at Northumberland, it was to be executed there and its handling with the train crew at that point is the work of a telegrapher. Awards 1167, 1168, 1456, 2087, 2936. If the train order had directed the engineer and conductor to make both movements even though involving a change of engines, the result might will be different. The operator at Northumberland should have been called to do the work. Train Order No. 109 is controlled by the same principle. A affirmative award is required.

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 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.

Dissent to Award 5087, Docket TE-5038

We disagree with the application here given Article 3, "Train Orders," particularly the engrafting on its clear and explicit terms of the strained interpretations of the word "handle" found in former awards to the end of now attaching these progressively expanded meanings to this single word with a result contrary to the understanding of the parties and contrary to the intention of the tribunal originally promulgating the rule. The quite evident practical handling of the train orders here involved alone should have suggested the necessity for determination of the issue based upon discriminating consideration of the particular facts in conjunction with independent consideration of Article 3 rather than upon applications given the rule by former awards occurring under differing circumstances.

The history of the original promulgation of this Article definitely shows its purpose to have arisen from the complaint of the Telegraphers upon the growing tendency of Carriers to require train and engine service employes to handle their train orders, instructions, etc., direct with the train dispatcher by telephone rather than through the telegraphers, thus transferring telegraphers' work to these other employes not covered by the Telegraphers' Agreement. The purpose of Article 3 as then promulgated was to insure to telegraph employes the work of handling train orders to the extent and under the conditions stated by that Article. It was not intended thereby to transfer to telegraph employes the methods and work in connection with the delivery of train orders as always had been used and continued thereafter throughout the years to be used and performed by others than telegraphers.

Neither was it intended otherwise to expand the meaning of the word "handle" to limit the Carrier either as to the form or detail of handling train orders nor the station or stations where they shall be handled except that in such respects it were demonstrated that the clear and explicit prohibition intended when the parties negotiated and agreed upon the Article had been transgressed.

Article 3 simply and directly protects telegraphers in their rights in the handling of train orders, exactly as specified, at offices where an operator is employed and is available or can be promptly located; with exception of an emergency, in which case the telegrapher will be paid for the call. The rights of telegraphers thus protected were rights they had previously enjoyed, but were never intended to be extended to convey rights which had not ac-

crued to them and to interfere with the operations of the Carrier in respect to effecting delivering of train orders, as now progressively culminated by this and preceding awards, to which reference has been made—notably Awards 1167, 1168, 1456, 2087, and 2926, with their accompanying dissents, and others.

Handling train orders “in care of” is no new innovation on the lines of this Carrier. It has been in use for many, many years, during which period new agreements have been negotiated without protest or claim being made that the practice of handling train orders “in care of” was in violation of the agreement, thus indicating clearly an understanding on the part of both parties that the practice was not in violation of the agreement. See Award 2436 and others.

This dissent is recorded against the continued unwarranted impediments imposed upon carrier operations by the new and unintended meanings attributed to Article 3 through the construction thereof found in this and the prior awards upon which reliance is placed.

/s/ C. P. Dugan

/s/ J. E. Kemp

/s/ R. H. Allison

/s/ A. H. Jones

/s/ C. C. Cook