

Award No. 5122

Docket No. TE-5039

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**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 the terms of the Telegraphers' Agreement when and because on March 25, 1948, it issued train Order No. 1 at Northumberland addressed to Extra 1255 at Northumberland Interchange which governed the movement of Extra 1255 from that location to Hanover Yard and which was carried into Northumberland Interchange from Northumberland by Extra 144; in consequence thereof the senior idle extra employe shall be paid a day's pay, or \$10.80 which is the established rate of clerk-operators at Northumberland.

2—The carrier violated the terms of the Telegraphers' Agreement when and because on September 3, 1948, it issued train Order No. 5 at Plymouth Junction addressed to Extra 144 at Berwick Yard which governed the movement of Extra 144 Berwick Yard to Hanover Yard and which was carried into Berwick Yard from Plymouth Junction by Extra 139; in consequence thereof the senior idle extra employe shall be paid a day's pay, or \$10.24, which is the established rate of clerk-operator at Berwick.

3—The carrier violated the terms of the Telegraphers' Agreement when and because on September 21, 1948, it issued train Order No. 3 at Bloomsburg addressed to Extra 463 at Berwick Yard which governed the movement of Extra 463 Berwick Yard to Northumberland and which was carried into Berwick Yard from Bloomsburg by train No. 1734; in consequence thereof the senior idle extra employe shall be paid a day's pay, or \$10.24, which is the established rate of clerk-operator at Berwick, and

4—The carrier violated the terms of the Telegraphers' Agreement when and because on September 29, 1948, it issued train Order No. 4 at Plymouth Junction addressed to Extra 139 at Berwick Yard which governed the movement of Extra 139 Berwick Yard to Berwick and which was carried into Berwick Yard from Plymouth Junction by Extra 144; in consequence thereof the senior idle extra employe shall be paid a day's pay, or \$10.24, which is the established rate of clerk-operator position at Berwick.

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

The Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The train order involved in Part 1 of this claim was copied by the telegraph operator on duty at Northumberland Station and delivered to the crew of Extra 144. This crew delivered copies to Extra 1255 at Northumberland Interchange, approximately one mile distant, where there were no facilities for handling train orders. Northumberland Interchange was within Northumberland yard limits within which trains could operate without train orders. It appears that the crew of Extra 1255 was called at Northumberland at 7:50 A.M. while the telegraph operator was not due to report until 8:30 A.M. Extra 1255 therefore moved to Northumberland Interchange without train orders, as it had a right to do, and there received train orders from the Northumberland operator in care of the crew of Extra 144.

The train order involved in Part 2 of this claim was issued at Plymouth Junction Tower and delivered to the Engineer on Engine 139, covering the movement of Engine 139 to Berwick Yard. It also covered the movement of Engine 144 from Berwick Yard to Hanover Yard. The train order was addressed to the Engineer of Engine 139 and the Engineer of Engine 144 "care of Engineer, engine 139 at Berwick Yard". The record shows that the same engineer handled the described movements of these two engines. A telegraph operator has never been maintained at Berwick Yard.

The train order involved in Part 3 of the claim was delivered by the operator at Bloomsburg to the conductor of Train 1734 which was handled by Engine 463. The train order annulled Train 1734 at Berwick Yard and directed Engine 463 to run extra from Berwick Yard to Northumberland. An operator has never been assigned at Berwick Yard. The same train and engine crew carried out both movements described in the train orders.

The train order involved in Part 4 of the claim was delivered to the Engineer of Engine 144 at Plymouth Junction and directed Engine 144 to run extra Hanover Yard to Berwick Yard. It also directed Engine 139 to run extra from Berwick Yard to Berwick. The same engineer handled both engine movements, he changing to Engine 139 at Berwick Yard. An operator has never been assigned at Berwick Yard.

It has long been the rule that the work of a class of employees reserved to them in a collective agreement cannot be delegated to others without violating the agreement. The Telegraphers' Agreement reserves the sending, receiving, copying and delivering of train orders to the telegraphers. It is also well established that the receiving of such communications includes copying and delivering to the train crews which are to execute them. Award 1713. The handling of train orders at a station where there is an employee covered by the Telegraphers' Agreement is work belonging to that employee. His right to the work cannot be circumvented by devices such as depositing the train orders in waybill boxes or attaching them to train registers. Award 1878. Nor may they be entrusted for delivery to someone not included within the class covered by the Agreement. Award 2087. Consequently, they may not be handed to one train crew for delivery to another. Award 2936.

The Carrier urges that the rule is different where a telegrapher is not maintained at the point where the train order is to be delivered to the crew that is to execute it. It further urges that the method employed has been used for many years and is a practice which has been generally followed. Assuming that it did become a general method of handling under situations such as we have here, it is not controlling for the reason that the work of sending, receiving, copying and delivering train orders is reserved to telegraphers by their agreement. The delivery of train orders to a train crew by one outside the Telegraphers' Agreement, is a violation of the Telegraphers' Agreement.

It is urged that no other practical method exists for the delivery of train orders under the situation existing in the claim before us other than by sending them in care of another train crew. This is undoubtedly true upon occasion. But on the other hand, the presence of a penalty for such violation, restrains the indiscriminate delivery of train orders by those outside the scope of the Telegraphers' Agreement. While the payment of a penalty which the Carrier is unable to avoid may occasionally be required, it is more economical than the maintenance of additional telegraph stations and at the same time it safeguards the work reserved to telegraphers by their agreement with the Carrier.

We are of the opinion, however, that the correct penalty to be applied to Part 1 of the claim is a call for the operator at Northumberland. By calling him to handle the train order before extra 1255 left Northumberland at 7:50 A.M., there would have been no agreement violation. As to Parts 2, 3 and 4 of the claim, one day's pay to the senior idle extra employe covered by the Telegraphers' Agreement constitutes the proper basis of claim. Awards 1220, 2817, 4903.

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 1 sustained for a call per Opinion and Findings. Claims 2, 3 and 4 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of November, 1950.

Dissent to Award 5122, Docket TE-5039

For the reasons expressed in our dissent to Award 5087, Docket TE-5038, involving the same parties, we likewise dissent to this award.

/s/ C. P. Dugan
/s/ J. E. Kemp
/s/ R. H. Allison
/s/ A. H. Jones