

Award No. 6071

Docket No. TE-5854

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**UNION PACIFIC RAILROAD COMPANY
(Northeastern District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (South-Central and Northwestern Districts) that:

(a) The Carrier violated the terms of the agreement between the parties when on February 2, 1951, it required or permitted Conductor Sundby in charge of Work Extra 526 to copy, complete, and deliver to other members of his crew, Train Order No. 267, at Boise Junction, Idaho.

(b) In consequence of this violation the Carrier shall pay to R. M. Long, an idle extra employe, a day's pay based on the minimum rate in the seniority district where the violation occurred.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of June 1, 1947, as amended September 1, 1949, is in evidence, hereinafter referred to as the Telegraphers' Agreement.

On February 2, 1951, Work Extra No. 256 in charge of Conductor Sundby departed from Boise at or about 10:25 P.M. on a return trip destined to Nampa, Idaho, located 19 miles distant on single track territory.

It is the requirement under the rules that all trains have a train order and or a clearance card before entering the main line. There is a telegraph service employe at Boise to handle any and all train orders and other communications service.

In this case, on February 2, 1951, Conductor Sundby did not secure a train order or clearance card before his train left Boise, and his train proceeded down the spur track to Boise Junction, a point where no telegrapher is on duty, 3.2 miles from Boise. At this point where the train was to enter the main line, the train conductor came in on the train dispatcher's telephone circuit and copied and handled train order No. 267 at 10:47 P.M.

All data submitted by the Carrier is a matter of record with the Employees or has been presented to petitioners and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves a telephone order that was copied and handled by Conductor Sundby, in charge of Work Extra Train No. 526, at Boise Junction, Idaho, on February 2, 1951. No Telegrapher is on duty or stationed at Boise Junction. It is contended that such action is a violation of the Scope Rule and Rule 62 of the Agreement between the parties.

This is not a new issue and, while the Awards are conflicting, there is unanimity upon the proposition that where, as here, the Scope Rule lists positions instead of delineating work, it is necessary to look to practice and custom to determine the work which is exclusively reserved by the Scope Rule to persons covered by the Agreement.

Rule 62 reads as follows:

"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."

From a careful reading of the record before us it is impossible to say that the work involved has been exclusively reserved to telegraphers by agreement, tradition, historical practice or custom.

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of January, 1953.