

Award No. 6167

Docket No. TE-5824

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Adolph E. Wenke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Tennessee Central Railway, that

(1) The Carrier violates and continues to violate the provisions of the agreement between the parties, when it requires or permits employes holding no rights under the scope of said agreement at Old Hickory, Tennessee, to copy train orders, block trains, perform "OS" work and other communications service of record over the telephone; and

(2) If the Carrier elects to continue the performance of this communications work at Old Hickory, it shall be performed by and be assigned to employes coming under the agreement in accordance with the rules of said agreement; and

(3) For each day, on each eight hour trick that the violations take place commencing March 18, 1950, and continuing until the violations are corrected, the Carrier shall be required to pay to the senior idle employe under the agreement, on the seniority district, eight hours' pay at the established rate for such work.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of May 1, 1924, as to rules and working conditions, subsequently revised and amended September 1, 1949, is in effect between the parties, hereinafter referred to as the Telegraphers' Agreement.

Old Hickory, Tennessee is located at the end of the single track Old Hickory Branch freight line of this Carrier. This branch line extends from Stone River, the junction point to Old Hickory a distance of 7.3 miles in length. Freight trains moving to and from Old Hickory start and terminate at Shops Freight Yard, Nashville. The mileage between Nashville and Stone River on the main line is 9.8 miles.

because there is no telegraphing to do at this station. I also told Mr. Dunn that if an operator-clerk was sent out here to work it would mean that a clerk would be cut off, and this I did not want to do.

/s/ R. R. Rummage
R. R. Rummage, Agent."

The General Superintendent then declined the request.

There is no merit whatever to the claim here advanced by Employes, as is conclusively borne out by the record, and statement of Mr. R. R. Rummage, Agent at Old Hickory, attached hereto, designated Carrier's Exhibit "F."

Carrier, therefore, respectfully requests that your Honorable Board deny the claim in its entirety.

The Carrier is making this submission without having been furnished copy of Employes' petition and respectfully requests the privilege of filing a brief answering in detail the ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by the Petitioner in relation to such issues.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employes and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The General Committee of The Order of Railroad Telegraphers claims Carrier has violated, and continues to violate, its Agreement with them when it requires or permits employes holding no rights under their Agreement to copy train orders, block trains, perform "OS" work and other communications of record at Old Hickory, Tennessee by means of the telephone. It asks that for each eight-hour trick on which such violations occur Carrier be required to pay the senior idle employe eight-hours' pay at the established rate for such work, dating its claim from March 18, 1950.

This claim had its origin when J. R. Tarpley, an unassigned operator-clerk, made an eight-hour pay claim for March 18, 1950, when not used at Old Hickory, Tennessee. The claim was based on the fact that the Agent at that point, an employe not covered by the Telegraphers' Agreement, had performed telegraph work in connection with Train Order No. 15. Carrier declined this claim on April 3, 1950. Thereupon, as of April 11, 1950, the matter was taken up with Carrier by the Organization. Subsequently, on April 21, 1950, the Organization called to Carrier's attention that on March 23, 1950, it issued Train Order No. 23 and on March 30, 1950, Train Order No. 12 and permitted them to be handled at Old Hickory by employes not under the Telegraphers' Agreement and advised that a claim would be made for each of these days. Claim for these dates was made on August 19, 1950, for Mrs. Mila J. Pride. On that date the claim was amended by asking a day's pay for the idle senior employe under the Telegraphers' Agreement for each day, on and after March 23, 1950, on which employes at Old Hickory, not covered by the Telegraphers' Agreement, are permitted to "OS" trains, copy train orders, clear trains, or perform any kind of communication or record service.

Carrier contends that the claim, being in blanket form, is too general, indefinite and vague; and that it fails to identify the employes for whom loss is claimed, thus precluding a determination of their availability and qualification.

This contention has often been answered by this Division. As stated in its Award 3687:

"The fact that the claim is general and fails to name the claimants except as a class is not a bar to the disposition of the claim."

The reason therefor is set out in Award 4821 as follows:

"We think the correct procedure is to permit the filing of general claims where the question at issue operates uniformly upon a class of employes that is readily determinable. There is no reason why the work of this Board should not be so expedited. Technical procedures are not contemplated. The policing of an Agreement ought not to be made unnecessarily difficult by requiring the filing of a multitude of claims when the disposition of a single issue decides them all. The Organization is authorized to represent the employes and where no prejudice arises out of group handling, we think it is entirely proper."

Here the claim is of a type that a decision as to one employe will decide it as to all and the matter of determining the senior qualified idle employe available on each of the days for which claim is made is only a matter of detail in checking the seniority records and really no part of the claim itself. If it has first been determined whether or not the violation claimed actually occurred then the determining of who is entitled to be compensated because thereof is a matter of detail.

The claim here made arises out of Carrier's operation of its third class freight trains #64 and #65 between its Shop Yards at Nashville, Tennessee, and Old Hickory, Tennessee, a distance of 15.4 miles. No. 64 is scheduled to run daily, except Sunday, from the Shop Yards, where it originates, to Old Hickory, leaving the Shop Yards at 7:30 A.M. to arrive at Old Hickory at 8:40 A.M. It travels east from the Shop Yards to Stone River on the single main line track of Carrier, a distance of 8.1 miles. Stone River is a non-agency point and the conductor of train #64 is required to register the arrival and departure of his train at this point in a book kept there for that purpose. The train then proceeds to Old Hickory, the terminus of a 7.3 mile branch line. As No. 65 this same train is scheduled to leave Old Hickory at 1:10 P.M. to arrive at the Shop Yards at Nashville at 2:10 P.M., registering at Stone River on its return trip the same as it did going out.

The branch line from Stone River to Old Hickory was acquired by the Carrier in 1923. From that time until January 10, 1938, employes covered by the Telegraphers' Agreement were employed there, the last position being that of an operator-clerk which position was abolished effective as of that date. Presently the force at Old Hickory consists of an Agent, Cashier and two Clerks none of whom are under the Telegraphers' Agreement. The Shop Yards referred to herein are 1.7 miles east of Nashville.

When the position of operator-clerk was abolished at Old Hickory, Carrier by Bulletin No. 3 dated January 7, 1938, notified all concerned that, "Effective January 10, 1938, and continuing until further notice, No. 65 will not be required to obtain a clearance card at Old Hickory."

This same provision has been in its published Time Table Schedules since September 24, 1950, under "Special Instructions 3" as follows:

"Additional Initial and Clearance Card Stations (Rule 83-A) A train must receive a clearance card before leaving its initial station, except No. 65 will not be required to receive a clearance card before leaving Old Hickory."

It was the desire of Management to operate trains #64 and #65 in the following manner: a clearance order would be given #64 before it left the Shop Yards at Nashville; it would then travel to Old Hickory, via Stone River, registering at the latter point; and it would return as train No. 65, clearing Old Hickory by authority of Bulletin No. 3 and, since September 24, 1950, by Scheduled Time Table Authority, making Report No. 8 to the telegrapher at the Shop Yards. This would permit it to make the round trip without having to communicate with anyone at Nashville or the Shop Yards. This seems to be a perfectly proper and safe operation, considering everything involved, and one the Carrier could properly put in operation.

Work of a class covered by the scope of an agreement belongs to the employes in whose behalf it is made and cannot be delegated to others without violating the agreement. When the scope rule of an agreement consists of naming the positions then, generally speaking, the traditional and customary work performed by the employes assigned thereto constitutes the work falling within such scope rule.

The burden of establishing facts sufficient to authorize the allowance of a claim is upon him who seeks its allowance.

Rule 12 of the parties' Agreement provides:

"No employes other than those covered by this agreement shall be required or permitted to transmit or receive train orders or messages by telephone or telegraph except in cases of emergency."

When one or more exceptions are expressed in a rule no other or further exception will be implied. By letter dated June 27, 1930, the exception to Rule 12 was interpreted to mean "casualty, an unavoidable accident, an act of God, or a delay which is the result of a cause not known to the Carrier when train left the last telegraph office."

On March 18, 23, and 30, 1950, train #64 had departed from the Shop Yards at Nashville before it became known to those in charge that the Extra East freight would need to go into Old Hickory. Delayed departure of the Extra East freight on these dates made it necessary to advise those in charge of train #65, which had been #64, of that fact making necessary the train orders. We find the factual situation on each of these days brings it within the interpretation. That this interpretation has been so understood by the parties ever since January 10, 1938, when the change was made at Old Hickory is evidenced by the fact that no claims have ever been filed because thereof prior to the one for March 18, 1950. What is said of the train orders issued on March 18, 23 and 30, 1950, would be true of all train orders sent to Old Hickory for the crew of train #65 on and after March 30, 1950, if sent under like conditions.

While, as already herein stated, it was proper for Carrier to arrange to handle train #64 from the Shop Yards at Nashville to Old Hickory on an original clearance order issued to the crew thereof at the Shop Yards before its departure and for the return of #65 from Old Hickory on authority of Bulletin 3 and later the Time Table, however, the fact is it did not require its employes operating train #65 to comply with these instructions. Carrier permitted a practice to develop of the conductors on train #65 calling the train dispatchers at Nashville by telephone from Old Hickory, just before the departure of their train therefrom, and obtaining information which was, in fact, a clearance of their train from Old Hickory and onto the single main line at Stone River for its return to the Shop Yards. We have often held that what was here done was work falling within the scope of Telegraphers' Agreements. See Awards 1281, 1552, 3881, 4268, 4458, 4516, 4624, 4811, 4882, 5086, 5407, 5517 and 5872. It is true that the conductors gave various reasons, some personal, for calling but the fact is the dispatchers at Nashville gave them the information they asked for when they called. Carrier is responsible for permitting this practice to exist. It would appear, from the statement of Con-

ductor L. V. Norrod, that it was still being done in May of 1952 which is more than two year after this complaint was originally made. We find that as long as Carrier permits this practice to continue it is violating the scope of the Telegraphers' Agreement.

Claim is made for eight hours' pay for each trick on which such violations occurred. Rule 5, of the parties' Agreement, insofar as here material, provides:

"Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

Since but a single call is involved on each day train #65 leaves Old Hickory, which is daily except Sunday, we find the work done would properly fall under this rule and the claim will be allowed accordingly.

As to claim (1) we find Carrier is violating the scope of the Telegraphers' Agreement by permitting the conductors of train #65 to call the dispatchers at Nashville from Old Hickory and obtain from them information which is, in effect, a clearance of their train from that point to the Shop Yards at Nashville. That as to claim (2) it will be sustained but in doing so it should be understood that Carrier is not hereby prevented from stopping the practice which now exists on the part of the conductors of train #65, and on which the allowance of this claim is based. As to claim (3) it will be sustained but limited to a call for each day on which the violation has occurred, which we find is daily except Sunday commencing with March 19, 1950, but not including March 23 and 30, 1950, or any other day when a train order was issued under circumstances bringing it within the exception to Rule 12.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Carrier violated the Agreement.

AWARD

Claim sustained in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of April, 1953.