

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago and Eastern Illinois Railroad; that

(1) The Carrier violated the terms of the effective agreement between the parties when and because it required or permitted Conductor Clark, an employe not covered by said agreement, to handle train order No. 295 addressed to Extra 1934, south, at Gerald, Illinois, 6:42 p.m., July 22, 1949; and

(2) The senior idle telegraph service employe on the seniority district on July 22, 1949, shall be compensated in the amount of one day's pay of eight hours at the established rate for the work of which we has deprived by the Carrier's violative action.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing the date of May 1, 1945, is in effect between the parties to this dispute.

Rule 61 listing the "Schedule of Positions and Rates of Pay" at page 32 of the effective agreement shows the following positions as being negotiated into the agreement at the point involved in this claim:

Location	Position	Rate per hour	One and one-half rate
Gerald.....	Agent-Operator	\$0.86	\$1.29
Gerald.....	Operator-Clerk	.84	1.26
Gerald.....	Operator-Clerk	.84	1.26

On or about November 1, 1948, the Carrier closed Gerald Station and declared all of the positions thereat abolished; however, a telephone communication device is still maintained by the Carrier at this location.

Gerald, Illinois, is located on the St. Louis Subdivision on a branch line between Woodland Junction and Villa Grove. This is a single track operation where trains are operated daily by train orders and manual block protection.

On July 22, 1949, Conductor Clark, in charge of Extra train 1934, south, while at Gerald, Illinois, was required or permitted by the Carrier to per-

delivery of a message by telephone from the dispatcher to a trainman in order to advance the train. This was decidedly not a practice resorted to with any degree of regularity but was something which occurred infrequently, only under conditions similar to those here related. It is a matter of record that train service employes have always copied train orders as occasion demanded at points where telegraphers are not employed. This practice is recognized by Rule 27, as well as in numerous decisions of the Board. In denying claim in Award 4259 (Referee Curtis G. Shake) it was held by this Division that " * * While it is sometimes difficult to distinguish cases on the basis of the facts involved, we are inclined to the view that the services performed by the conductor in the instant case should be regarded as presumably incidental, rather than unwarranted invasion of the telegraphers field * * *." Such were also the facts in this case. Further support of Carrier's position that the use of the telephone is not restricted exclusively to telegraphers is found in Awards 603, 1145, 1320, 1533, 3363, 3603, 4259, 4799, 5079, 5080, 5081, 5229 and others.

Since no telegrapher was employed at the location involved and, therefore, none deprived of any work, the agreement was not violated. The claim is without merit and must be denied accordingly.

Carrier affirmatively asserts that all data contained herein has been handled with the employes' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim, rules and facts involved herein are similar to those involved in Award 5086 as to present the same ultimate issue for determination by this Division. The claim in Award 5086 was sustained, and that Award has since been reinforced by Award 5992. These precedents are considered controlling in the present case as there is no material distinction between the cases. Award 5866 involved a claim for the re-establishment of a position rather than merely for one day's pay and can be distinguished from Awards 5086 and 5992 at least on that basis.

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 Carrier violated the Agreement.

AWARD

Claim (1) and Claim (2) both sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of September, 1953.

DISSENT TO AWARDS Nos. 6321, 6322, DOCKETS Nos. TE-6395, TE-6396

Award 6321 and its companion Award 6322 merely follow, without deciding anything, the predilections of previous holdings of this Board. In doing so they look aside from the square holding of Award 5866 on the same rule and attempt to distinguish it on the ground that the claim there called for the restoration of a position rather than for payment for one day. The distinction is hollow for the style of the claim cannot dictate the basis in which the claim sounds; else valid precedent could be escaped or secured by the framer of the claim.

Award 5866, not here followed, straightforwardly held that the rule there, which is the one here, **limited** the use of the telegrapher craft to those offices where employed. And that is what the rule says, viz.,

"No employes 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 notified and paid for the call."

But our current opinion adheres to Award 5086. That award fictionizes that because telephone operators, other than the switchboard variety, are within the scope of the telegraphers' agreement, there must be a telegrapher stationed at, or paid for not being used at, every country telephone booth at each end, if not both ends, of every blind siding throughout this nation's maze of railroads. Thus that award, which is cited and followed by Award 5992 (see its dissent), both being cited and followed by the current Awards 6321 and 6322, precipitates a rank absurdity upon the rail industry which is committed by law to the economical, efficient and safe service of the public.

Must train orders be passed through the hands of three men, written down, repeated and perhaps erred in, before a train can be moved out of every and often remote blind siding or branch line? Or, at these locations where offices are not maintained for the volume and regularity of such transactions, may not a conductor take such orders **direct** from his dispatcher without a fictional middleman? Is the impracticality of the former a command to be met or paid for or shall carriers follow the sound interpretation of the rule?

This is chaos by interpretation. But of greater importance is the proposition that this Board with its Urim and Thummin cannot go on bewildering railroad managements in the serious business of moving the public and its property.

We dissent to the perpetuation of poor decisions.

/s/ E. T. Horsley

/s/ W. H. Castle

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp