

Award No. 6461
Docket No. TE-6180

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward M. Sharpe, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
NEW YORK CENTRAL RAILROAD COMPANY
(Line West)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (West of Buffalo), that:

(1) The agreement between the parties is violated when the Carrier permits or requires employes having no rights thereunder by use of the telephone, to act as telephone and block operators when they copy and handle track motor car orders (Form M) at Elmore, Ohio, during times that an employe under the agreement at that location is not on duty; and

(2) In consequence of this violation the Carrier shall pay the occupant of the position of Agent-Telegrapher at Elmore, Ohio, under the provisions of the "call" rule on November 11 and 14, 1949, and continuing each day that subsequent similar violations take place when this employe is not called to perform these duties that are his under the agreement.

EMPLOYEES' STATEMENT OF FACTS: Elmore, Ohio, is a one-man agency located on the Norwalk Branch of the Toledo Division. The employe working thereat holds seniority on Seniority District No. 4 as shown in the Wage Scale of the current agreement between the parties.

Mr. W. B. Hesselbart is the Agent-Telegrapher in charge of the one-man station at Elmore. He works regularly assigned hours 9:00 A. M. to 6:00 P. M., with one hour for lunch. The station is closed Saturday and Sunday and Agent-Telegrapher Hesselbart is subject to "call" service at this one-man agency to perform any work arising at a time outside his regularly assigned tour of duty.

Commencing November 11, 1949, and on subsequent dates, at a time of the day before Claimant is scheduled to report for work, the Carrier requires track motor car operators at Elmore to use the railroad telephone at that point to contact other open stations at distant points on either side of Elmore on this branch line, such as Lindsey, five miles to the east, or Genoa, five miles to the west. The telegraph service employes at these two distant stations report for work at 7:30 A. M. and 7:45 A. M., respectively.

to obtain line-ups from Operators by telephone from any station convenient for them without regard to whether or not there was an Operator on duty at the station where the line-up was copied."

The relevancy of the emphasized portions of the several Third Division Awards cited here to the circumstances of the claims now before the Board is readily apparent.

CONCLUSION

The carrier has shown that—

1. There was no violation of rules and no Agreement rule was changed nor any new Agreement rule established when the use of Motor Car Permit Form M was made effective in June, 1948;
2. Motor Car Permit Form M does not govern train movements but simply permits a motor car operator to start out with his track motor car and proceed to destination where he removes the track motor car from the track;
3. Motor Car Permit Form M is handled only by the Telegraph Operator and the Motor Car Operator who requests the information. Train Dispatchers have nothing to do with originating or handling the Form M permits;
4. There is no Agreement rule which reserves to operators monopoly rights to handle Motor Car Permit Form M nor is there any rule restricting a motor car operator from handling Motor Car Permit Form M as is the case with respect to train orders, the handling of which is restricted to Telegraphers' Agreement employees to the extent described in Article 22 of the applicable Agreement;
5. The Scope Rule of the applicable Agreement does not reserve to Telegraphers' Agreement employees the right to handle all telephone communications as the Organization would here extend the Scope Rule to phone conversations, relating to Motor Car Permit Form M information, between a motor car operator at a closed station and telegraph operator at an open station;
6. The handling of Motor Car Permit Form M cannot properly be classed in the category of work generally recognized as Telegraphers' Agreement work traditionally and historically handled by telegraph before advent of the telephone;
7. Before the telephone was used to handle various phases of Telegraphers' Agreement work in lieu of telegraph, motor car operators furnished their own flag protection in travelling with their track motor cars and did not operate under orders handled by Morse wire;
8. Awards of the Third Division, N.R.A.B. uphold the carrier's position;
9. The claims in this docket are without support in any Agreement rule and should be denied.

All evidence and data set forth in this ex parte submission have been considered by the parties in conference.

OPINION OF BOARD: Elmore, Ohio is a one-man agency located on the Norwalk Branch of the Toledo Division. The employe therein holds seniority

on Seniority District No. 4. The Agent-Telegrapher in charge of the station works assigned hours from 9:00 A. M. to 6:00 P. M. with one hour for lunch. The station is closed Saturday and Sunday, but the agent is subject to "call" service to perform any work arising at a time outside his regularly assigned duty.

Commencing on November 11, 1949 and on subsequent dates and at a time of day before the agent is scheduled to report for work, the Carrier requires a track motor car operator at Elmore to use the railroad telephone at that point to contact other open stations. There is a telephone located in a box outside of Elmore station. It is a Carrier party telephone circuit. The section foreman uses this telephone when the agent is not on duty for permission to enter the block, if there are no other trains moving between Elmore and the station to which he will travel with the track motor car. The section foreman copies a train order, a copy of which reads as follows:

"THE NEW YORK CENTRAL RAILROAD COMPANY

MOTOR CAR PERMIT FORM M

	<u>Millbury Jct.</u>	<u>8:00 A. M.</u>	<u>Dec. 7, 1949</u>
	<u>Issuing Station</u>	<u>Time</u>	<u>Date</u>
To Operator	<u>Pahe</u>	of Track Motor Car No.	<u>1178W</u>
	<u>Name</u>		
At	<u>Elmore</u>		
	<u>Station or Mile Post</u>		
You are authorized to use	<u>main</u>	track.	
From	<u>Elmore</u>	To	<u>Genoa</u>
		or	
Between	<u></u>	And	<u></u>
until	<u>Eight Twenty Five</u>	<u>8:25 A. M.</u>	
Information regarding other track motor cars in block			
<u>Clear</u>			

Track Motor Car Operators must remove motor car immediately upon arrival at destination and report clear to Signalman. If any unusual delay occurs enroute remove motor car from track and report to Signalman promptly.

Andy Haley Signalman."

It is an admitted fact that the use of the telephone would be performed by the agent if a request was made while he was on duty.

Decision in this case depends upon an interpretation of Article 22, which reads as follows:

"ARTICLE 22. Handling Train Orders.

"No employes other than covered by this agreement 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."

It is the position of the Carrier that neither the Scope Rule nor any other rule of the Agreement refers directly or indirectly to handling of information shown by motor car operators or by telegraph operators on Motor Car Permit Form M which pertains only to the time a section motor car may be moved on a track and moved to a certain location where the motor car operator again removes the motor car from the rails; that Article 22 deals only with train orders; that there is no blocking of trains involved as is performed by a "block operator"; and that the Motor Car Permit Form M is not required by any Telegraphers' Agreement Rule. It is considered that every use of the telephone was not intended as telegraphers' work. In Award 1983 it was held that employes whose duties require the transmitting or receiving of messages, orders, or reports of record by telephone in lieu of telegraph constitutes the telephone work reserved exclusively to telegraphers.

In Award 4516 it was held that the sending and receiving of train line-ups is work reserved to telegraphers under the Scope Rule of their Agreement. In that Award it was said "The reservation of work by telephone includes only that which telegraphers formerly performed by telegraph and nothing more. It follows that the use of the telephone in the case at bar by the track motor car operator is contrary to the Agreement.

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 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 and that because of such violation the employe is entitled to reparation for services of which he was unjustly deprived.

AWARD

The claim of the employe is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1954.

DISSENTING OPINION TO AWARD 6461, DOCKET NUMBER TE-6180

The Award herein is in error for the primary reason that it is based upon the bare assertion that, in copying Motor Car Permit Form M, "The section foreman copies a train order."

Such an assertion is inconsistent with the following rules governing the handling of train orders, which were quoted from the Rules for the Government of the Operating Department, New York Central System:

- No. 201 "For movements not provided for by time-table, train orders will be issued by authority and over the signature of the Superintendent and only contain information or instructions essential to such movements."
- No. 203 "Train orders must be numbered consecutively each day, beginning at midnight."
- No. 205 "Each train order must be written in full in a book provided for the purpose in the office of the train dispatcher; and with it recorded the names of those who have signed for the order; the time and the signals which show when and from what offices and by whom the order was repeated, and the responses transmitted; and the train dispatcher's initials. These records must be made at once and never from memory or memoranda."

The Carrier stated as follows in showing that the Form M Permit is in no degree comparable with train orders as contemplated by Article 22 or the Operating Rules, supra:

- 1. "Train Dispatchers have nothing to do with the Motor Car Form M permit. The operator at the nearest open station who is asked by a motor car operator initiates the Form M Permit and furnishes same to the motor car operator."
- 2. "All such information obtained by the motor car operator concerns only the movement of his track motor car. The track motor car is not a train and the information thus obtained by telephone has nothing whatsoever to do with the operation or movement of trains and the Form M is not handled by train or engine crews or by the dispatcher."
- 3. "Motor Car Permit Form M is handled only by the Telegraph Operator and the Motor Car Operator who requests the information. Train Dispatchers have nothing to do with originating or handling the Form M permits;"

The Carrier also stated that section motor cars are not trains and their movement was never governed by train orders before or since Motor Car Permit Form M was adopted.

It is noteworthy that the majority herein have assigned no reason for holding that Form M is a "train order". A holding with no assigned reason therefor cannot be considered as a binding precedent (Award 4137). Manifestly, there is no analogy between the handling of a train order as described in the Operating Rules and the handling of the Form M as described by the Carrier.

The Award herein also is in error for the reason that it cites Awards 1983 and 4516 as precedents, which Awards involve other Carriers and different rules, practices and factual situations, and ignores Awards on other Districts of the same Carrier which are strictly in point with the issue involved in the instant case, one of which (Award 4967) prescribed a

method by which the Form M Motor Car Permit could be used without violating the Telegraphers' Agreement, viz., by calling a telegrapher at an open station.

The majority herein also ignore numerous Awards in which claims were denied when bona fide train orders were handled by others than telegraphers but through telegraphers at open stations.

For the foregoing reasons, we dissent.

/s/ W. H. Castle

/s/ R. M. Butler

/s/ E. T. Horsley

/s/ C. P. Dugan

/s/ J. E. Kemp

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 2 To Award No. 6461

Docket No. TE-6180

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: New York Central Railroad Company (Line West).

Upon application of the representatives of the employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In the original Award we held that decision was based upon Article 22—"Handling Train Orders":

"No employees other than covered by this agreement 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."

Based upon the above rule we held that the use of the telephone by the track motor car operator was in violation of the Agreement and the employee was entitled to reparation for services of which he was unjustly deprived.

In an interpretation of the above Award, dated June 28, 1955, we held that Article 22—"Handling Train Orders"—is a general rule which controls the employee's right to compensation. Article 4 (b) of the Agreement controls as to the amount of compensation an employee is entitled to when such services are rendered in advance of his regular working hours.

We now hold that if the violation occurred within two hours of the time the operator was supposed to go on duty, the claim should be paid under the Overtime Rule and if the violation occurred more than two hours before the employee was regularly assigned to go on duty, he should be paid under the Call Rule. The above interpretation is what was intended when the original Award was made.

Referee Edward M. Sharpe, who sat with the Division as a member when Award No. 6461 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1957.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 6461

Docket No. TE-6180

NAME OF ORGANIZATION: The Order of Railroad Telegraphers

NAME OF CARRIER: New York Central Railroad Company (Line West)

Upon application of the representatives of the employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The request of the Organization herein for an interpretation of the above Award wherein it was held "That the Carrier violated the Agreement and that because of such violation the employee is entitled to reparation for services of which he was unjustly deprived";

The above quote requires an interpretation of Article 4 (b) of the Agreement effective November 1, 1950 which reads as follows:

"All service continuous with and in advance of the regular working hours shall be paid for at time and one-half rate on the actual minute basis."

It is the position of the Carrier that an employee called less than two hours prior to his regular starting time shall be paid for on the actual minute basis.

It is the position of the Organization that an employee called prior to his regular starting time is entitled to two hours' pay at time and one-half as is provided for under Article 5 of the above Agreement.

Article 22—Handling Train Orders—is a general rule which controls the employee's right to compensation. Article 4 (b) of the Agreement controls as to the amount of compensation an employee is entitled to when such services are rendered in advance of his regular working hours. The amount of the award in the case at bar is controlled by Article 4 (b) heretofore quoted.

Referee Edward M. Sharpe, who sat with the Division as a member when Award No. 6461 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of June, 1955.

Champlin-Shealy Co., Chicago, Ill.

Printed in U. S. A.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 2 To Award No. 6461
Docket No. TE-6180

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: New York Central Railroad Company (Line West).

Upon application of the representatives of the employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In the original Award we held that decision was based upon Article 22—"Handling Train Orders":

"No employees other than covered by this agreement 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."

Based upon the above rule we held that the use of the telephone by the track motor car operator was in violation of the Agreement and the employee was entitled to reparation for services of which he was unjustly deprived.

In an interpretation of the above Award, dated June 28, 1955, we held that Article 22—"Handling Train Orders"—is a general rule which controls the employee's right to compensation. Article 4 (b) of the Agreement controls as to the amount of compensation an employee is entitled to when such services are rendered in advance of his regular working hours.

We now hold that if the violation occurred within two hours of the time the operator was supposed to go on duty, the claim should be paid under the Overtime Rule and if the violation occurred more than two hours before the employee was regularly assigned to go on duty, he should be paid under the Call Rule. The above interpretation is what was intended when the original Award was made.

Referee Edward M. Sharpe, who sat with the Division as a member when Award No. 6461 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1957.

Champlin-Shealy Co., Chicago, Ill.

Printed in U. S. A.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 6461

Docket No. TE-6180

NAME OF ORGANIZATION: The Order of Railroad Telegraphers

NAME OF CARRIER: New York Central Railroad Company (Line West)

Upon application of the representatives of the employees involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The request of the Organization herein for an interpretation of the above Award wherein it was held "That the Carrier violated the Agreement and that because of such violation the employee is entitled to reparation for services of which he was unjustly deprived";

The above quote requires an interpretation of Article 4 (b) of the Agreement effective November 1, 1950 which reads as follows:

"All service continuous with and in advance of the regular working hours shall be paid for at time and one-half rate on the actual minute basis."

It is the position of the Carrier that an employee called less than two hours prior to his regular starting time shall be paid for on the actual minute basis.

It is the position of the Organization that an employee called prior to his regular starting time is entitled to two hours' pay at time and one-half as is provided for under Article 5 of the above Agreement.

Article 22—Handling Train Orders—is a general rule which controls the employee's right to compensation. Article 4 (b) of the Agreement controls as to the amount of compensation an employee is entitled to when such services are rendered in advance of his regular working hours. The amount of the award in the case at bar is controlled by Article 4 (b) heretofore quoted.

Referee Edward M. Sharpe, who sat with the Division as a member when Award No. 6461 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of June, 1955.