

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Colorado and Southern Railway:

(1) That Carrier violated the Agreement between the parties, when on the 1st day of February, 1952, and continuing thereafter, it required and permitted employes not covered by the Telegraphers' Agreement, to handle train orders and clearance cards, and effect delivery of same at Broomfield, Colorado, at a time when the Agent-Telegrapher assigned at this one-man station was not on duty, but available for "call" to perform such work.

(2) That in consequence of said violations the Agent-Telegrapher at Broomfield, Colorado, shall be paid for "call" in accordance with Rule 9 of the Agreement, commencing February 1, 1952, and for each and every violation thereafter, as may be shown by joint check of Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect an Agreement, dated October 1, 1948, by and between The Colorado and Southern Railway Company, hereinafter referred to as Telegraphers or Employees. Copy of said Agreement has been filed with National Railroad Adjustment Board and is made a part hereof as though copied herein word for word.

That both Carrier and Telegraphers are subject to the Railway Labor Act as amended; that this is a dispute between Carrier and its Employees covered by an Agreement.

Broomfield, Colorado, is located on the line of Carrier about 14 miles north of Denver. It is a one-man agency in charge of an Agent-Telegrapher, whose assigned hours are 5:00 P. M. to 2:00 A. M. with one hour for lunch, Monday through Friday of each week. Rest days are Saturday and Sunday.

By an agreement, the details of which are unknown to these Employees, a Chicago, Burlington and Quincy train is operated over Colorado and Southern tracks from Broomfield to Prospect Station (Denver). Since this train on its southbound trip originates at Broomfield on the Colorado and Southern tracks, it is necessary that the train be given "running orders" to authorize its movement from Broomfield to Prospect Station, a distance of about 14 miles.

Prior to February 1, 1952, these "running orders" were issued at Broomfield, using the Agent-Telegrapher at Broomfield for the purpose of copying

the Agreement and delivered to the train crews at Longmont, and there was no one who made delivery of such train orders at Broomfield.

The Employees, in the handling of this case on the property, cited several Awards of the Third Division as supporting their claim. All of these Awards cover an entirely different situation as they covered the sending of orders in care of a Conductor of a train to be delivered to the Conductor of another train at a meeting point. Conductors handling and delivering such orders were not covered by the Telegraphers' Agreement—that is not the case in this claim. Only employees covered by the Agreement handled train orders and delivered those train orders to the train and engine crew that was to carry out and fulfill the orders. There is no rule in the Agreement requiring train orders to be handled through one particular station rather than through another.

The claim in this case is "on all fours" with the claim covered by Award 1489 of the Third Division. Award 1489 supports the Carrier's contention in this case that there was no violation of the Agreement in that only employees covered by the Agreement handled the train orders and delivered them to the crew that was to execute them. Your Board, in that case, contended the same as the Carrier is contending in this case, when your Board stated:

"The rule in question is clear and explicit and we find in it nothing which requires that train orders shall be handled through one station rather than through another. The rule governs. Under the facts of this case there was no violation in sending the orders in question through the station at Enid."

The rule in Award 1489 is similar to Rule 29 in The Colorado and Southern Railway Company's Current Agreement. This Rule was not violated as only employees covered by the Telegraphers' Agreement were permitted to handle the train orders. We, therefore, request that this claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim presents the question whether train orders are required to be issued and delivered by a telegrapher at the point or station where they are to be executed.

The train was a CB&Q train operating Lyons to Denver. It operated on CB&Q track Lyons to Broomfield, crossing C&S track at Longmont, and on C&S track Broomfield to Denver. Since it was not a regularly scheduled C&S train, it required the train orders in question before entering C&S track at Broomfield.

Longmont was a continuously open station but Broomfield was not. The telegraphers at both points were joint CB&Q and C&S employees but were carried on C&S payroll and on C&S seniority roster and were C&S employees for our purposes here. The train orders in question were C&S train orders issued and delivered by a C&S telegrapher at Longmont to a CB&Q train crew for execution at Broomfield when Claimant was not on duty at Broomfield. Longmont and Broomfield are in the same seniority district.

The train crew that received the train orders at Longmont was the same train crew that was to execute them at Broomfield. The train was one and the same through train but was operated as a CB&Q train (No. 188) Longmont to Broomfield and as a C&S train (Extra 5092 South) Broomfield to Denver.

Rule 29 reads as follows:

"HANDLING TRAIN ORDERS. No employee 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 emergency, in which case the operator will be paid for the call."

The essential issue is whether the Rule is satisfied by the receipt, copying and delivery of train orders by a telegrapher to the train crew that is to execute them at another point in the same seniority district or whether the Rule requires train orders to be received, copied and delivered by a telegrapher at the point where they are to be executed.

First. The text and the established purpose of Rule 29 is to preserve the work there described to which telegraphers are entitled and to prevent encroachments upon that work by employees "other than covered by this agreement" (Award 86).

Under rules such as Rule 29 the receipt and copying of train orders is telegraphers' work; and so is the delivery of train orders to the train crews that are to execute them. It follows that the Rule is violated when train orders are delivered by a telegrapher to a train crew at one point for intermediate handling and delivery to another train crew for execution at another point as in Awards 1167, 1456, 1713, 2926 and 5877. The reason why the Rule is violated in such cases is that such handling and delivery of a train order is not a duty required of the intermediate train crew, but rather the duty of a telegrapher in relation to the other train crew that is to execute the order (see Award 5087).

Second. When there is identity of train and identity of personnel, we find nothing in Rule 29 which requires every train order to such a train to be delivered by a telegrapher at the point or station where it is to be executed. Familiar examples are: a train order delivered at one point to a train to run late between two later points; and round trip train orders (Awards 1489 and 4819).

The train crew to which such train orders are delivered are the addressees of the train orders; and the train orders so delivered govern the movements of the particular train to which delivery is made by a telegrapher. In cases such as these, therefore, there is no intermediate handling of telegraphers' work by employees other than those covered by the agreement. Such train crews are handling their own orders, not somebody else's.

Third. In this view of the Rule, the ultimate question presented by this claim is whether there was identity of train and identity of personnel Longmont to Denver.

Identity of personnel is established by the record.

As to identity of train, the Organization argument is that this was two separate trains, because it operated on CB&Q track Longmont to Broomfield and on C&S track Broomfield to Denver, and because it had a CB&Q number Longmont to Broomfield and a C&S number Broomfield to Denver.

Such an argument is based on fiction rather than on reality. However numbered and wherever located on the trip, this train was in fact a single through train with a single train crew. When it passed through the joint station at Longmont, it was properly handed train orders by a C&S telegrapher for execution on C&S track at Broomfield. We are unable to deduce a violation of Rule 29 here by indulging in the hypothesis that this train crew took delivery of train orders addressed to them for execution for the purpose of themselves making a later delivery to themselves at the point of execution.

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 Rule 29 of the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Signed) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1954.