

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chesapeake and Ohio Railway, (Chesapeake District) that:

1. The Carrier violated the terms of the Agreement on each of the dates, September 11, 12, 13, 14, 15 and 18, 1950, between the hours of 9:01 A. M. and 5:01 P. M., on September 19 and 20, 1950, between the hours of 8:01 A. M. and 5:01 P. M., when an employe, or employes, not subject to said agreement were required or permitted to handle train orders at Coney, (Stevens Yard, Ky.) and,

2. The Carrier violated the terms of the Agreement when on December 22, 1950, commencing on Second Trick, it required or permitted employes not subject to said Agreement to handle train orders at Coney (Stevens Yard, Ky.), and continued to violate said Agreement continuously twenty-four hours a day to and including first trick January 17, 1951, and,

3. In consequence of the violative practice described in Paragraph 1 above, the senior idle employe, on the district, extra in preference, on each of the dates mentioned herein shall be paid an amount equivalent to a day's pay for each of said dates, and,

4. In consequence of the violative practice described in paragraph 2 above, the Carrier now shall pay to the senior idle employes under the Agreement and entitled to the work, extra in preference, who were thus deprived of its performance, an amount equivalent to a day's pay at the minimum telegrapher's rate for each trick of eight hours commencing on second trick, December 22, 1950, and each eight-hour trick thereafter to and including the first trick January 17, 1951.

EMPLOYES' STATEMENT OF FACTS: This is a consolidation of two claims involving same violation at the same station on two different occasions.

There is an agreement in effect bearing the date of October 17, 1947, revised September 1, 1949, to include the provisions of the Chicago Agreement of March 19, 1949, the 40-Hour Week Agreement.

CONSTITUTE BONA FIDE TRAIN ORDERS (WHICH WE DO NOT CONCEDE) THE HANDLING OF SUCH ORDERS WOULD NOT HAVE BEEN TELEGRAPHERS' WORK UNDER THE CLEAR EXCEPTION CONTAINED IN THE APPLICABLE AGREEMENT RULE.

Claim should be denied.

All data submitted have been discussed in conference or by correspondence between the parties in the handling on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The question posed for disposition here is whether a yardmaster may deliver train orders where no telegrapher is employed.

The case arises out of Stevens Yard, which is part of the facilities of the Cincinnati Terminal, and is used largely for "transfer cuts" for freight trains moving both east and west.

These transfer cuts enter and leave Stevens Yard at the west end, where a yard office called "Coney" is located. There is no telegraph office at this point, but there is one at the east end of the yard, 2.1 miles distant, known as "CS" Cabin.

On the dates shown in the claim, conditions affecting the main tracks at a number of places between Stevens and Covington, Kentucky, the speed of all trains using these tracks was to be reduced and the necessary orders were issued by the train dispatcher to the telegrapher at "CS" Cabin addressed to all freight trains west in care of the yardmaster at Coney. These orders were then sent by yard engine to Coney, and in some instances telephoned, where the yardmaster delivered them to the trains addressed.

The usual train order rule (No. 58 in this Agreement) was in effect on the property and it is generally conceded that the handling of train orders includes delivery to the person addressed.

Carrier's defense is that the handling of the transfer cuts was strictly a yard operation and that no train orders, as contemplated by Rule 58, were necessary and in support of this position relies on the following definition: "Yard. A system of tracks within defined limits provided for the making up of trains, storing of cars and other purposes, over which movements not authorized by time table, or by train order, may be made, subject to prescribed signals and rules, or special instructions."

We think the Carrier's position is sound (Award 1396) and that arrangements could be made in this yard to handle these transfer cuts without the use of train orders, but that was not done in the instances complained of. The Carrier admits that the usual train order form No. 19 was used, but says it was not a "bona fide" order. This conclusion we cannot accept. We know of no more "bona fide" train order than form No. 19. It is one of the standard forms used almost universally, and its routine of handling is so well known as not to require explanation here, and when on the occasions involved here the copies were delivered by the yardmaster, that was a violation of the Agreement.

It is a bit difficult for us to understand why this case is here. The Carrier promised to pay for similar violations in 1945, but for some reason never got around to do it. It paid similar claims in the Russell Yard in 1949. The Carrier says they were not similar, but the only difference between the two cases is the distance between the telegraph offices and places where delivery

of the train orders were made, and in the final destinations of the trains that received them. (This matter of distance is discussed in "Position of the Carrier" in Award 1145 involving these same parties, in which the Carrier makes the statement, "The nature of the information given the motor car operator contrasts sharply with the nature of a train order, the latter conferring absolute rights.").

As to handling train orders over the telephone, we said in Award 6123, "We think that, under the operating rules, the receipt of train orders addressed to yard engines by a yard foreman over the telephone constitutes handling train orders and is in violation of the Agreement."

The final point the Carrier seeks to make is that "Clearance Form A" was not required in connection with the train orders used, relying on Rule 211 C of the operating rules which reads: "Clearance Form A must be delivered together with all train orders to each person addressed, except as prescribed by Rule 217."

The pertinent part of Rule 217 reads: "A train order to be delivered to a train at a point not a train order office or at which the office is closed, must be addressed to 'C & E at, (or between) care of,' and forwarded and delivered by the conductor or other person in whose care it is addressed and who is responsible for its delivery."

"The number of such train orders must be shown in the usual manner on Clearance Form A of the train making delivery, and must be listed in a message accompanying the orders to be delivered."

Conceding therefore that the Carrier was in compliance with its operating rules, the fact remains that where there is a conflict with the operating rules and the agreement with the employees, the operating rule must yield. See Award 5871.

We think the above shows that the Carrier violated the Agreement, and that the claim should be sustained.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of June, 1954.

DISSENT TO AWARD NO. 6678, DOCKET NO. TE-6568

This claim is sustained on an alleged violation of Rule 58, the so-called standard "Handling Train Orders" rule.

All movements involved in this dispute were internal yard movements, all within yard limits and made by yard crews. The Award admits that train orders are not necessary in yard movements by yard crews.

There is no telegraph office maintained at Coney. The office of Yardmaster is located at Coney, approximately 2½ miles west of "CS" Cabin. Telegraph service is maintained round-the-clock at "CS" Cabin. The territory within the yard limits where speed restrictions were necessary involved certain sections of track west of Coney.

There were two types of so-called orders copied on Form 19 train order blank, insofar as the parties to whom the orders were addressed are concerned, i.e., orders addressed to "C&E All Frts West Care Yardmaster, Coney," and orders addressed solely to "Yardmaster Coney."

Dealing with the orders addressed to "C&E All Frts West Care Yardmaster, Coney": These orders were addressed in care of the Yardmaster at Coney, were copied in manifold by a telegrapher at "CS" Cabin, messengered to the Yardmaster at Coney by a yard crew, the Yardmaster delivering a copy to each yard crew handling a transfer cut over the reduced speed section of track.

We dissent to the sustaining Award in the case of the orders delivered "in care of" for the reasons set forth in our Dissent to Award 1096, Docket TE-995, and our dissents to numerous subsequent awards on the same issue. Operating Rule 217 has been in effect since 1887. The first agreement between the parties to this dispute was effective January 1, 1893.

All of the remaining train orders were addressed solely to "Yardmaster Coney," were copied in manifold by the telegrapher on duty at "CS" Cabin, and messengered to the addressee at Coney. The majority opinion fails to distinguish that these so-called orders were addressed and delivered to "Yardmaster Coney." When the so-called orders were delivered to the Yardmaster at Coney, the responsibility of the telegrapher for the handling of the orders terminated. What disposition the Yardmaster made of the information contained in these so-called orders was of no concern to the telegraphers or their Organization. Rule 58 was complied with.

For the above reasons we most vehemently dissent to this Award.

/s/ C. P. Dugan

/s/ R. M. Butler

/s/ E. T. Horsley

/s/ W. H. Castle

/s/ J. E. Kemp