

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad, that

(1) The Carrier violated the terms of the effective agreement between the parties when it required or permitted Conductors, who are employes not covered by said agreement, to handle train orders at Saginaw, Georgia, on January 27; February 4, 6; May 6, 20; and August 22, 1950; and

(2) The senior idle telegraph service employe, on the seniority district on each one of the dates listed above, shall be compensated in the amount of one day's pay of eight hours at the established rate for the work of which he was deprived by the Carrier's violative action.

EMPLOYES' STATEMENT OF FACTS: Saginaw, Georgia, is located on the Western Division. It is a communications point, where a train dispatcher's telephone is maintained by the Carrier, having been installed just prior to the first day listed in the instant claim. A passing track is located at Saginaw for trains to pass on the single track right of way.

Conductor Griffin in charge of Extra 1610 North at 10:12 A. M., January 27, 1950, was required to copy Train Order No. 31 at Saginaw.

Conductor Strickland in charge of Extra 1609 South at 12:24 P. M., February 4, 1950, was required to copy Train Order No. 39 at Saginaw.

The Conductor in charge of Work Train Extra 7122 at 8:19 A. M., February 6, 1950, was required to copy Train Order No. 31 at Saginaw.

Conductor Harden in charge of Extra 1662 South at 1:15 P. M., May 6, 1950, was required to copy Train Order No. 77 at Saginaw.

Conductor Griffin in charge of Extra 1610 South at 11:50 A. M., May 20, 1950, was required to copy Train Order No. 95 at Saginaw.

Conductor Knight in charge of Work Extra 7402 at 10:19 A. M., August 22, 1950, was required to copy Train Order No. 55 at Saginaw.

Claim was made that the Carrier by the installation of communication facilities and permitting or requiring communications service to be performed at Saginaw on the dates listed above, did in fact open a telegraph (telephone) office, and that a telegraph service employe should have been assigned to perform the communications work in connection with the transportation movements involved, as required under the provisions of the Telegraphers' Agreement. A day's pay of eight hours was claimed on behalf of the senior idle telegraph service employe on the seniority district who was denied the right

the instant dispute and the conditions surrounding it are comparable in every respect to those involved in the several awards cited, evidencing the fact that the claim is without merit and should be denied by the Board.

In further substantiation of the Carrier's contention that the agreement was not violated, the Board's attention is attracted to its Award 6032, dated January 12, 1953, wherein the Board, with Referee Dudley E. Whiting sitting as a member thereof, denied the claim of the employees. This was a case submitted to the Board by the Telegraphers on the Atlantic Coast Line Railroad, wherein it was contended that the use of the telephone by section foremen in conversing with train dispatcher in one instance and with a telegrapher at an adjacent station in another instance to secure a line-up of expected trains in the vicinity where the section foremen were working was a violation of the agreement. The evidence presented in this case clearly and unmistakably proved that for many years the use of the telephone for the purpose mentioned had been a practice on this property and that it was not work exclusively reserved to be performed by telegraphers. As a matter of fact, neither the scope rule nor any other rule of the agreement allocated work to that particular group of employees and the Board so held in its Opinion and Findings. Here the same group of employees, under the same agreement and the same conditions and almost identical set of circumstances, are again bringing before the Board a dispute identical in every respect to one which had already been considered by the Board and denied in its Award 6032. This in itself evidences the fact that the instant dispute is without merit and should be denied.

The respondent carrier reserves the right, if and when it is furnished with ex parte petition filed by the petitioner in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered in this, its initial answer.

Data in support of the Carrier's position have been presented to the Employees' representative.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arises because of conductors at Saginaw, Georgia, copying train orders direct from the dispatcher at Manchester, 160 miles away. Saginaw is a point where a long passing siding is located. There are no telegraph-operators stationed at that point.

There are many awards of this Board on the subject of handling, copying and receipt of train orders by employees other than those covered by the Telegraphers' Agreement. However, there is little need to resort to them for guidance in connection with the disposition of the instant claim.

The instant agreement contains the "standard" train order rule known here as Article 20 and which is quoted in the position of the Employee. Furthermore, the parties recognize Mediation Agreement in Case A-511 (which is also quoted in the Employees' Position) as governing in their contractual relationships.

We have been cited to the position taken by the Carrier in the docket upon which Award No. 6032 was made as indicative of the understanding which Carrier has of the effect of the Scope Rule, of the train order rule, and of the Mediation Agreement. An examination of the master file in that docket shows that this Carrier there took the position that "The only 'duty' or 'responsibility,' that is, by the terms of the Agreement, reserved exclusively to telegraphers, is the handling of train orders, and even that reservation has an exception as train dispatchers are also required and/or permitted to do so." (See P. 127 of that docket.) The Carrier also

stated at page 59 of that docket that the handling of train orders is still the work of and being performed by telegraphers, whether its means be by telephone or telegraph. Many payments of claims similar to the one made in this docket are cited by the Employees. The Carrier seeks to discount the importance of these payments asserting that they were made in error, at the lower level, and without knowledge of the Personnel Department. However, it appears that there were a number of such payments extending over a period of at least four years and that they were authorized in some instances by a Superintendent and in others by a General Superintendent. Those facts point to the reasonable conclusion that the Personnel Department knew or should have known about them. Under the circumstances, we have no difficulty in recognizing such settlements as part of general carrier policy. It, therefore, appears regardless of what may be the rule on other properties, that on this property the handling of the train orders here involved by the train service employees is violative of the Agreement. The proper payment under the circumstances here present is a day's pay to the senior idle telegrapher on the seniority district. That has also been recognized by the Carrier as being proper in the settlements referred to. (See also Award 5086.)

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 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 29th day of November, 1954.

DISSENT TO AWARD NO. 6809, DOCKET NO. TE-6574

The fourth paragraph of the Opinion in this Award shows conclusively that the Referee was influenced in concluding to sustain the Organization's claim because of certain statements made by this Carrier in Docket TE-5988, Award 6032, a dispute involving the same parties.

The Referee states:

"An examination of the master file in that docket [TE-5988] shows that this Carrier there took the position that "The only "duty" or "responsibility," that is, by the terms of the Agreement, reserved exclusively to telegraphers, is the handling of train orders, and even that reservation has an exception as train dispatchers are also required and/or permitted to do so." [Parenthetical insertion ours.]

The above quotation was lifted bodily from context, without regard to the subject matter dealt with in the seventh paragraph, page 127, of Carrier's defense in Docket TE-5988, Award 6032.

The Referee disregarded or failed to comprehend the subject under discussion in the paragraph above referred to.

The Carrier was replying to several assertions made by the Organization, i.e., “* * * that it is the ‘duty’ or ‘responsibility’ of telegraphers to perform all communication work at the station to which they are assigned * * *.” (Emphasis added.)

The subject, it will be noted, referred to stations at which telegraphers were employed and in its reply the Carrier was dealing with Article 20, the standard train order rule, which deals with train orders copied by employees not covered by the Agreement, at stations which are telegraph points, but at a time when the telegrapher is not on duty. For ready reference Article 20 is here quoted:

“No employe 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 paid for the call.” (Emphasis added.)

This also applies to the Referee’s reference to statement of the Carrier at page 59 of Docket TE-5988, Award 6032.

Numerous Awards of the Third Division have repeatedly held that all communication work is not reserved exclusively to telegraphers.

Docket TE-5988, Award 6032, dealt with a section foreman, in one instance, securing a line-up direct from the train dispatcher at a telegraph station, but before the telegrapher came on duty.

The second instance involved a section foreman securing a line-up at a telegraph station, but before the telegrapher came on duty, by contacting a telegrapher on duty at an adjacent station and securing a line-up through such telegrapher, which action has been approved by a number of Awards of this Division.

The confronting case involved train service employees copying a total of six train orders over a period of eight months at a blind siding, where no telegrapher was ever employed.

The claim in Docket TE-5988 was denied by Award 6032 on the grounds of past practice. In the confronting case there was sufficient evidence bearing on past practice to warrant a denial.

Prior settlements referred to by the Referee were made at the lower level and without the knowledge of the Personnel Department.

The Agreement contains no penalty rule excepting that provided in Article 20. Notwithstanding, the Referee, under the circumstances present in the case, assessed a penalty of a day’s pay to the senior idle telegrapher in the seniority district. This Board is without authority to write rules for the parties; that is a matter of negotiation.

For the above reasons we dissent.

/s/ C. P. Dugan
/s/ R. M. Butler
/s/ W. H. Castle
/s/ E. T. Horsley
/s/ J. E. Kemp