

Award No. 7400
Docket No. TE-7136

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Western Maryland Railway, that:

1. Carrier violated the Agreement between the parties, when on the 10th day of April, 1952, it required and permitted Mr. Hall, a conductor, an employe not covered by the Telegraphers' Agreement, to copy and deliver train order No. 102, at Security, Maryland, when the agent-operator was not on duty.
2. Carrier violated the Agreement between the parties when, on the 29th day of April, 1952, it required and permitted Mr. Hall, a conductor, an employe not covered by the Telegraphers' Agreement, to copy and deliver train order No. 69, at Security, Maryland, when the agent-operator was not on duty.
3. Carrier shall be required to compensate Mr. B. H. Worth, regular assigned agent-operator, Security, Maryland, who was ready, willing and available for call to perform services in handling such train orders on the dates aforesaid, as provided in the Agreement between the parties.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement effective on the 1st day of February, 1951, between Western Maryland Railway Company, hereinafter referred to as Carrier, and The Order of Railroad Telegraphers, hereinafter referred to as Employees. A copy of said Agreement is on file with the National Railroad Adjustment Board, and is by reference made a part hereof as though copied herein word for word.

The dispute involves interpretation of the foregoing agreement based on undisputed facts. Claims of Employees on behalf of agent-operator Worth at Security, Maryland, were duly handled on the property as provided in the Railway Labor Act, as amended, and in conformity with the custom prevailing on this property. The Carrier, acting through its duly authorized officers, denied the claims.

The dispute arose out of the following actions:

On the 10th day of April, 1952, a conductor, a train service employe of Carrier, copied and delivered train order No. 102 to Conductor and Engineer

to copy a train order on Sunday at a point where an operator is employed daily except Saturday and Sunday. Claim was denied.

Award 6032: "This claim involves the receipt of lineups by section foremen over the telephone, in one case from the dispatcher and in another case from an adjoining station, at points where employees covered by the agreement are assigned but during hours when they were not on duty. It is contended that such action is a violation of the scope rule of the agreement between the parties.

"This is not a new issue and while our awards are conflicting there is a fair degree of unanimity upon the proposition that where, as here, the scope rule lists positions instead of delineating work, it is necessary to look to tradition, historical practice and custom to determine the work which is exclusively reserved by the scope rule to persons covered by the agreement.

"Upon the record before us it is impossible to say that the work involved has been exclusively reserved to telegraphers by tradition, historical practice and custom on this property. In fact, from the evidence presented, one might reasonably reach an opposite conclusion. Under such circumstances the claim is without merit."

CONCLUSION

The Carrier has shown that under the scope rule this claim is without merit and should be denied for the following reasons:

1. A telegrapher was not on duty, or scheduled to be on duty, at Security at the time of the alleged violations of the scope rule.
2. The scope rule does not reserve to telegraphers the exclusive right to handle train orders in all instances.
3. The Telegraphers' Organization has for many years and, despite repeated revisions of the agreement, acquiesced in and accepted the practice of train crews copying train orders at points where a telegrapher is not on duty.
4. The Employees' request is tantamount to a request for a new rule.
5. To accede to the Employees' request would result in creation of numerous unnecessary jobs with unwarranted expense.
6. Awards of the Third Division, National Railroad Adjustment Board, support the position of the Carrier.

This dispute has been handled by the Carrier in accordance with the provisions of the Railway Labor Act and the rules of the National Railroad Adjustment Board. All data submitted in support of its position by the Carrier have been presented to the Employees and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties are in agreement as to the basic facts of this case. At Security, Maryland, there is one position covered by the Telegraphers' Agreement. The "Agent-Operator" is regularly assigned to work from 7:00 A. M. to 3:00 P. M. daily except Saturday and Sunday. Among his duties is the handling of train orders concerning the movement of a "travelling switcher" which operates in the vicinity.

On April 10, 1952 the travelling switcher, Extra 22 West, was working at Security under a train order authorizing use of the eastward main track until 8:01 P. M. It developed that this was insufficient time to complete its work and at 7:49 P. M. the Conductor communicated by telephone with the train dispatcher, informing him that additional time was necessary. On April 29, 1952 the travelling switcher was again operating after the assigned hours of the Agent-Operator. This time the work was completed sooner than had been expected. Since another train was involved, it was necessary to issue a train order, annulling the previous arrangement, so that the travelling switcher could proceed. Again, the train order was transmitted to and handled by the Conductor. On each of these instances a claim was filed for a call, under Rule 12, in favor of the Agent-Telegrapher. The pertinent paragraph cited by the Employees follows:

"Rule 12

"(d) Employees notified or called to perform work not continuous with the regular work period shall be allowed a minimum of three (3) hours at pro rata rate for two (2) hours work or less, and if held on duty in excess of two hours, time and one-half will be allowed on the minute basis."

The Carrier declined the claims on the ground that, traditionally, on its property, the copying of train orders has not been reserved exclusively for employees covered by the Telegraphers' Agreement. It is pointed out that the Standard Train Order Rule has never been made a part of the Agreements which this Carrier has had with the ORT. And the Carrier further contends that the Scope Rule in no way reserves the copying of train orders exclusively to the employees covered by this Agreement.

"SCOPE

"Rule 1.

"(a) This Agreement shall govern the working conditions and rates of pay of Telegraphers, Telephone Operators (except Telephone Switchboard Operators), Agents (Freight and Ticket Agents as shown in this schedule), Agent-Telegraphers, Agent-Telephoners, Towermen, Levermen, Tower and Train Directors, Block Operators, and Operator-Clerks, hereinafter referred to as 'employees.'

"Any combination of two or more of the above classifications, occupants of any other positions listed in the wage scale.

"(b) Positions coming within the scope of this Agreement shall be filled by employees from the official seniority lists as provided in Rule 4, Paragraph (a), of this Agreement."

A long list of prior cases handled by this Board has established the fact that the practice of handling train orders, and other communications of record, varies from one Carrier's property to that of another. Some Carriers, by agreement, past practice and custom have reserved, almost exclusively, the receiving, copying and transmitting of train orders to those covered by the Telegraphers' Agreement. With other Carriers the Standard Train Order Rule has not become a part of the working agreement with their employees. Nor has it ever been the practice to exclusively reserve to this Organization the copying of train orders.

The history of agreements and working rules on this Carrier's property clearly demonstrates that it has expected and required conductors, trainmen and other employees to receive by telephone and copy train orders, wherever a telegrapher is not stationed or on duty. Such has been the practice since 1913. (See *Book of Rules of the Western Maryland Railroad Company*, pp. 61-63: "Rules for Dispatchers, Operators, Trainmen, Trackmen and

Other Employes Governing the Movement of Trains by Telephone". Here explicit instructions were given to trainmen on how to copy train orders received by telephone.)

The Company's revised rules, issued November 1, 1924, some twenty-two months after the Scope Rule had been adopted in the parties' Agreement of January 1, 1923, gave instructions to the personnel at non-train order stations on the use of the telephone, the copying of orders and the forwarding of copies to the Chief Train Dispatcher for comparison with the original orders (Rule 704). Rule 704A of the 1924 Rules provided in part that "Track foremen will be furnished forms by the Chief Train Dispatcher and will arrange so that proper supply shall be given in each telephone booth or box on his section, and will forward to the Chief Train Dispatcher copies of train orders and Form 'A' filed therein". And Rule 708 of the 1924 version provided instructions for use of telephones by trainmen and enginemen at sidings.

There is nothing in our records to indicate that these practices which have been followed on this Carrier's property for forty years have been changed by any subsequent language added to the parties' Agreement. The present Scope Rule, in substance, is the same as that in the 1923 Agreement.

We must conclude that there was no violation of the Agreement when the Agent-Operator was not called back to copy the two train orders at Security, Maryland, on April 10, and April 29, 1952.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived hearing on this dispute; and

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September, 1956.