

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, 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 when on December 2nd, 3rd and 4th, 1953, it required or permitted persons having no rights under the agreement, vis., conductors and trainmasters, to handle train orders at or between Catlettsburg, Ky., and Leach, Ky., and,

(2) By reason of this violative action Carrier shall now, by appropriate order, be required to compensate the senior idle telegrapher on the district, extra in preference, an amount equal to a day's pay of 8 hours at the minimum rate on the district for each of the three days named in part 1 of this claim.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an agreement between the parties bearing date of September 1, 1949 as to rules, and February 1, 1951 as to rates of pay, and are by reference included herein as though set out word for word.

This dispute involves the interpretation of rules of the agreement, with particular reference to the handling of train orders. The claim was filed with representatives of the Carrier in the manner and in the time prescribed in the agreement. It was handled with the representatives designated by the Carrier to handle such disputes, up to and including the highest officer so designated, and was declined by these officers. The handling of the dispute on the property was in compliance with the requirements of the Railway Labor Act. The Third Division of the National Railroad Adjustment Board has jurisdiction of the parties and the subject matter, therefore, the dispute is properly submitted to this Division for decision and award.

The following sketch is presented for the purpose of assisting the members of your Board in a better understanding of the arrangement of facilities in the immediate vicinity and the relation of the involved points to each other. It does not, however, purport to be exact in all details; nor is there an attempt made to draw it to scale.

handling of train orders in this case was proper under the train order rule, a specific rule covering handling of train orders, and

II—The National Railroad Adjustment Board has in similar cases on this property and on other roads upheld the right of Carrier to handle train orders as was done in this case.

All data submitted have been discussed in conference or by correspondence with the employe representatives in the handling of this case.

(Exhibits not reproduced.)

OPINION OF THE BOARD: The Claim in this case involves two types of activity by persons not covered by the applicable Agreement between the Carrier and the Organization. These two types of activities are: (1) delivery of train orders out of a point at which a telegrapher is stationed; (2) the copying of train orders at a point where no telegrapher is stationed. No emergency is involved in any of the transactions of this case.

Regarding the first noted activity, the case involves the handling (delivery) of train orders by a person or persons not covered by the Telegrapher Agreement out of a point (Catlettsburg) where a telegrapher was stationed, to a point (Leach) where no telegrapher was stationed. One of the aspects involved in Award 6678 was similar handling (delivery) of train orders by persons not covered by the Telegrapher Agreement out of a point ("CS" Cabin) where a telegrapher was stationed, to a point (Coney) where no telegrapher was stationed; this was held to violate the Telegrapher Agreement. Award 6678 involved this same Carrier, this same Organization, and the same rules involved herein. In the case covered by Award 6678, as in the present case, the Carrier relied in part upon its Operating Rule 217. But that Rule clearly should not be held to govern over Rule 58 of the Telegrapher Agreement at a point where a telegrapher is stationed, for Rule 58 has clear and specific application to the handling of train orders at such points.

The existence of Award 6678 makes relevant here what this Board has previously said, to the effect that unless palpably wrong this Board is never warranted in overruling, in a subsequent dispute between the same parties, a previous award construing the identical provisions of their contract. See Awards 2517, 2526, and 6833.

The above considered, it must be concluded that delivery of train orders out of Catlettsburg by a person or persons not covered by the Telegrapher Agreement violated said Agreement and that the part of the Claim concerned with the issue of such delivery must be sustained.

By the same token, precedents on this same property require denial of that part of the Claim concerned with the issue of "copying" of train orders by persons not covered by the Telegrapher Agreement at a point (Leach) where no telegrapher was stationed. As to such copying, the identical issue is involved here that was involved in denial Awards 5079, 5080, and 5081. These Awards all involve this same Carrier, this same Organization, and the same rules involved herein, and said Awards give strong support to the Carrier on the "copying" issue in the present case. The Carrier finds still further support on this issue in the Award of Special Board of Adjustment No. 136, Case No. 10, also involving these same Parties.

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 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 in regard to the "delivery" issue involved herein, but that the Carrier did not violate the Agreement in regard to the "copying" issue.

AWARD

Claim sustained in part and denied in part as indicated in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 20th day of June, 1957.

SPECIAL CONCURRENCE TO AWARD NO. 7967, DOCKET NO. TE-7395

The Carrier Members heartily agree with the denial of that portion of the claim relating to the copying of train orders, at a non-telegraph station, by employees not covered by the Telegraphers' Agreement. It is consonant with a number of denial Awards on the same subject.

However, we dissent to the sustained portion of the claim involving "Orders in Care of" (Operating Rule 217) for the reasons set forth in our dissents to Awards 1096 and 6678.

/s/ C. P. Dugan
/s/ W. H. Castle
/s/ R. M. Butler
/s/ J. E. Kemp
/s/ J. F. Mullen