

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORFOLK SOUTHERN RAILWAY COMPANY

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

1. The Carrier violated the agreement between the parties when and because it permitted and/or required employes not covered by said agreement to handle the following train orders when no emergency existed:

	Station	DATE	TIME	ORDER NUMBER	TRAIN NUMBER	COPIED BY CONDUCTOR
(a)	Burns, N. C.	12/19/51	9:43 P. M.	91	98	Ashworth
	Carbonton	12/19/51	9:43 P. M.	91	63	Cox
(b)	Alligoods	9/ 6/51	10:45 A. M.	40	63	Pearce
	Alligoods	9/ 6/51	10:47 A. M.	42	63	Pearce
(c)	Boushell	6/ 5/51	3:19 P. M.	90	45	Straughn
(d)	Chapanoke	8/25/51	11:57 A. M.	60	1	Massey
	Chapanoke	9/ 8/51	2:01 P. M.	80	X-215 Nth	Sutton
(e)	Bellcross	11/21/51	2:08 P. M.	74	X-215 Sth	Crumpler
	Grimesland	5/23/51	3:07 P. M.	82	X-216 Sth	Taylor
	Hinson	9/28/51	2:36 P. M.	90	1	Oglesby
	Hinson	9/14/51	4:57 P. M.	122	X-544 Nth	Fuller
	McCullers	1/17/52	9:49 P. M.	97	48	Lilly
	Northwest, Va.	4/20/51	11:26 A. M.	64	1	Oglesby
	Snowden, N. C.	6/ 6/51	2:14 A. M.	26	63	Crumpler
	Snowden	11/21/51	3:24 P. M.	88	99	Morgan
	Snowden	2/ 5/52	9:57 A. M.	76	X-703 Nth	White
	Elizabeth City	6/23/51	2:50 P. M.	32	X-541 Nth	Norton
	Elizabeth City	6/23/51	2:52 A. M.	22	X-541 Nth	Norton
	Elizabeth City	6/24/51	2:32 A. M.	38	64	Pearce
	Elizabeth City	6/25/51	12:48 A. M.	22	X-541 Nth	Norton
	Elizabeth City	6/25/51	12:50 A. M.	24	X-541 Nth	Norton
	Elizabeth City	6/27/51	1:25 A. M.	32	X-541 Nth	Norton
	Elizabeth City	6/29/51	1:34 A. M.	26	X-541 Nth	Norton

	Station	DATE	TIME	ORDER NUMBER	TRAIN NUMBER	COPIED BY CONDUCTOR
	Elizabeth City	6/29/51	1:41 A. M.	32	X-541 Nth	Norton
	Elizabeth City	6/29/51	1:43 A. M.	34	X-541 Nth	Norton
	Elizabeth City	7/ 3/51	12:36 A. M.	26	X-541 Nth	Norton
	Elizabeth City	7/ 5/51	6:30 P. M.	74	Eng. 215	Morgan (TM)
	Elizabeth City	9/ 6/51	2:38 A. M.	30	63	Morgan
	Elizabeth City	11/ 6/51	1:52 A. M.	94	X-703 Sth	Alderson
	Winfall	9/ 5/51	9:59 A. M.	50	X-701 Sth	Scott
	Wadeville	2/15/52	9:59 A. M.	33	99	Hunt
	Neverson	3/22/52	5:16 P. M.	92	64	Massey
(f)	Neverson	5/23/51	4:33 P. M.	90	44	Straughn
	Neverson	6/22/51	4:40 P. M.	98	44	Straughn
	Neverson	8/16/51	12:47 P. M.	50	45	Bray
	Neverson	9/11/51	2:37 P. M.	70	45	Straughn
	Neverson	9/15/51	1:27 A. M.	26	X-529 Sth	Davis
	Neverson	9/20/51	1:25 P. M.	82	45	Straughn
	Neverson	9/21/51	2:10 P. M.	86	44	Morgan (TM)
	Neverson	9/26/51	2:32 P. M.	92	45	Straughn
	Neverson	9/27/51	2:30 P. M.	90	45	Straughn
	Neverson	9/27/51	2:32 P. M.	92	45	Straughn
	Neverson	10/ 3/51	3:36 P. M.	100	44	Morgan (TM)
	Neverson	10/ 4/51	1:07 P. M.	68	45	Straughn
	Neverson	10/16/51	1:35 P. M.	72	45	Straughn
	Neverson	10/18/51	1:22 P. M.	100	45	Straughn
	Neverson	10/22/51	3:03 P. M.	82	44	Straughn
	Neverson	10/22/51	4:38 P. M.	88	44	Straughn
	Neverson	11/21/51	1:22 P. M.	70	44	Straughn
	Neverson	1/ 8/52	1:00 P. M.	68	45	Wedding
	Neverson	1/17/52	12:21 P. M.	74	45	Mimms
(g)	Waddill	6/18/51	8:10 A. M.	34	PD-438	Walker
	Waddill	6/19/51	8:07 A. M.	36	PD-438	Walker
	Waddill	6/20/51	9:08 A. M.	76	PD-438	Walker
	Waddill	6/21/51	7:02 A. M.	44	PD-438	Walker
	Waddill	6/22/51	8:45 A. M.	46	PD-438	Walker
	Waddill	6/25/51	8:13 A. M.	32	PD-438	Sandifer
	Waddill	6/26/51	8:15 A. M.	42	PD-438	Sandifer
	Waddill	6/27/51	8:06 A. M.	48	PD-438	Sandifer
	Waddill	6/28/51	9:40 A. M.	46	PD-438	Sandifer
	Waddill	6/29/51	8:45 A. M.	72	PD-438	Sandifer
	Waddill	7/ 2/51	8:11 A. M.	34	PD-438	Sandifer

2. As a consequence of said violations the Carrier shall now be required to compensate the senior idle employe, extra in preference, for a minimum of a day's pay of eight (8) hours for each day that train orders were so handled at each of the points specified.

EMPLOYES' STATEMENT OF FACTS: This is a resubmission of the dispute in the above docket which the Board remanded to the parties by its Award No. 6779, according to the following Opinion of Board:

"OPINION OF BOARD: The within claims involved the handling of train orders by conductors at non-telegraphic stations where no telegraphers are employed. At some of the points, telegraphers

and while the Referee there refers to agreements made by employe representatives, the same principle must necessarily hold true as to interpretations made by such representatives.

Respondent carrier submits that unless there is stability in the interpretation and application of labor agreements the end result can only be one of chaos and uncertainty. If a duly accredited representative of the employes is to be allowed such wide latitude of (1) rejecting and disclaiming the pronouncement of a former general chairman upon which the carrier has throughout the years acted in good faith, and (2) pronouncing one interpretation today, and a diametrically opposite interpretation tomorrow, for the sake of expediency in the support of a claim, it can only result in confusion and distrust in the conduct of labor relations between employer and employes. Referee Fox very ably expressed himself along these lines in Award 9559 of the First Division, wherein he stated:

"Collective bargaining agreements, lawfully entered into, should be kept to the letter, unless and until terminated by one or more of the methods indicated above. The primary purpose of all legislation affecting the relations between employer and employe is to provide a substitute for arbitrary action on the part of either, and it will be an ill day for both carrier and labor if there should be a departure from this sound principle."

CONCLUDING REMARKS: The carrier urges that the petitioners claim should be denied. Carrier has shown by what has been termed by the referee as "newly discovered evidence" that it has acted in good faith throughout the years, both prior and subsequent to that letter-ratification, and strictly in conformity therewith. It has also acted in consonance with the interpretation expressed by the incumbent general chairman in Oral Argument, Docket TE-462. Certainly, in all good faith and fairness, petitioners should now be estopped in their effort to obtain through this Division an interpretation of the rule contrary to that promulgated by their duly accredited representatives, and acted upon in good faith by this carrier.

We reaffirm everything that has heretofore been said with respect to this claim, the practice in effect without question over a long period of years, confirmed by what the Referee termed "newly discovered evidence" as set forth in his opinion, Award 6779. We, therefore, respectfully urge that your honorable board deny this claim.

(Exhibits not reproduced).

OPINION OF BOARD: This dispute was before the Third Division once before as Docket TE-6724. By Award 6779 the dispute was remanded to the Parties in 1954 for further negotiations, with the privilege of resubmitting it to the Division in the event such negotiations should not result in settlement. The negotiations failed.

The claim involves the handling of train orders at points where no telegraphers are employed by persons not covered by the Telegrapher Agreement. While 62 instances are listed in the Claim, they represent a period of 11 months and involve 16 stations—the activity was not a consistent daily occurrence at any of the stations and the over-all average for all of the stations on a combined basis was less than one order per station per month, though in some instances several orders were handled at a particular station in a given month. At none of the stations was there regular and continuing day by day, week after week, handling of train orders by non-telegraphers. It would appear, then, that the more or less scattered instances herein constitute only "occasional" or "irregular" handling of train orders by non-telegraphers at stations where no telegrapher is stationed. The Record leaves little doubt that train orders have been so handled on this property for many years, starting about 1910 and continuing at least to the time of the incidents involved in the present dispute. This past practice is of paramount import-

ance in determining the coverage of a Scope Rule of the general character involved herein.

In addition to the Scope rule, the Record contains much discussion of Article 15 of the applicable Agreement of August 1, 1937. Both Article 15 (the so-called train order rule) and the Scope Rule were included in the Parties' first Collective Agreement in 1922—both were adopted in the light of the practice noted hereinabove, and that practice continued thereafter under said rules. These rules were retained unchanged in each successive Collective Agreement executed by the Parties (1924, 1926 and 1937); in each instance they were continued in the setting of the aforesaid practice. Similar rules and practice (and considerable similar background facts) were involved in denial Award 5079, in which this Division stated:

"This practice and the rule [Rule 58, which is similar to Article 15 in the present case] have continued unchanged through contract negotiations in 1942 and 1947. The rule * * * was first incorporated in this contract in 1927. Over these many years and in fact as early as 1917, these parties have been dealing with the problem of train and engine service employees securing train orders. So it cannot be said that the Organization has been sleeping on its rights or has been careless or negligent in the enforcement of its Agreement.

"That the Organization was cognizant of the implications of Rule 58 is evidenced by the fact that in negotiations leading up to adoption of the current Agreement * * * the Organization undertook to amend the Scope Rule."

But the Carrier receives even more support from certain well reasoned Awards, on the same general issue that is involved herein, adopted since the present dispute was remanded to the Parties. In particular see Awards 6863 and 7953; also see Award 7400. While some earlier Awards are contra, the present Referee finds Awards 6863 and 7953 more persuasive on the issue of handling of train orders by non-telegraphers at points where no telegrapher is stationed.

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of July, 1957.