

Award No. 8012
Docket No. TE-7153

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MAINE CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Maine Central Railroad:

(1) That Carrier violated the Agreement between the parties hereto when on the 4th day of December 1953, it required and permitted Engineer (Extra 960 East), an employe not subject to said Agreement, to handle Train Order No. 25, affecting movement of Engine 955 from St. Croix Jct. to Bangor, by carrying same from Machias, Maine to Salmon Falls, Maine, and there make delivery thereof to Engineer (Engine 955), the employe to whom such order was addressed.

(2) That Carrier shall be required to compensate the senior spare employe on the Eastern Division or if no spare employe, the senior idle employe, for eight hours (one day), for such violation as shown in Paragraph (1). The hourly rate to be based on the minimum hour wage rate for a telegraph position on such Division. The name of employe entitled to such compensation to be determined by joint check of Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect an agreement between the Maine Central Railroad Company, hereinafter referred to as Carrier and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The agreement became effective on the 1st day of January, 1951. A copy of said agreement is on file with this Board and, by reference is included herewith as though set out herein word for word.

This dispute involves interpretation of the rules of the agreement with particular reference to handling of train orders. The claim was filed with representatives of Carrier, in the manner and at the time prescribed in the agreement. The dispute was handled with representatives designated by Carrier to handle such disputes up to and including the highest officer so designated. The claim was denied by the highest officer designated to pass upon such disputes. This handling on the property was in compliance with the requirements of the Railway Labor Act. The Third Division, 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.

For the reasons outlined in its Position, the Carrier respectfully requests that the instant claim now before your Board be DENIED.

(Exhibits not reproduced.)

OPINION OF BOARD: On Friday, December 4, 1953, a locomotive which was due to make a trip from Calais to Bangor on the following day, became partially disabled. The Carrier called a crew to take a good engine—No. 960—to the engine house at Calais to replace the disabled engine, and to return the disabled engine—No. 955—to Bangor at slow speed. While engine No. 960 was enroute from Bangor, the train dispatcher issued a train order addressed to the engineer of No. 955 at Salmon Falls care of the engineer of No. 960, authorizing No. 955 to run from St. Croix Junction to Bangor. This train order was transmitted to the telegrapher at Machias, a station located between Bangor and Calais, and was delivered to the engineer of No. 960 at that point. The engineer proceeded to Salmon Falls, at which point no telegrapher was employed, changed locomotives and then, in accordance with the train order, took the disabled No. 955 back to Bangor. A telegrapher is employed at Calais, but not at Salmon Falls or St. Croix, both of which points are within the yard limits at Calais. The telegrapher at Calais was on duty at the time the transfer of locomotives was made and the return trip of No. 955 started.

It is contended that the carrying of the train order by the engineer of No. 960 to Salmon Falls and its execution at that point by the engineer of No. 955 constituted the "handling" of train orders by an employee not covered by the Telegraphers' Agreement; because of this, a day's pay is claimed for the senior extra or idle telegrapher employee on the division. The claim is based upon the Scope Rule and upon Article 21—Handling Train Orders, which provides in sub-paragraph (a) that: "No employee other than covered by this Agreement and Train Dispatchers will be permitted to handle train orders except in cases of emergency."

It is well established that under similar rules the work of "handling" train orders belongs to telegraphers; and that "handling" includes the delivery of train orders. Thus, claims have been sustained in many Awards where train orders have been given to one train crew to be delivered to another train crew which executed them. However, in this case, we are dealing with the special situation where a train order is delivered by a telegrapher to the same train crew which later executes it, although at a place other than where the delivery occurred and governing a different or continuing movement. The question in this case is whether the engineer of Train 960 delivered the train order to himself as the engineer of Train 955 at Salmon Falls. Petitioner contends that he did, that Train 955 was a new and different train and that the fact that the engineer was the same is of no relevance. Carrier, on the other hand, contends that the only "delivery" was made at Machias when the train order was delivered by the telegrapher to the employees who eventually executed it.

Several awards of this Division involving this special type of situation have been cited to us by the parties. The first of these was Award No. 1167. That case involved Trains 73 and 74 which ran from Cherryvale to Coffeerville and Coffeerville to Cherryvale, respectively. Telegraphers were employed at both of these stations; however, Train 73 arrived at Coffeerville before the telegrapher there went on duty, and Train 74 departed Coffeerville after the telegrapher there had gone off duty. The practice, which was the basis of the claim in that case, was that the telegrapher at Cherryvale delivered train orders for Trains 73 and 74 to the train crew at Cherryvale, the orders to No. 74 being addressed to that train at Coffeerville. It was stated in the Opinion in that case, that "Usually, but not always, and never necessarily, there is identity of personnel of the train crews." A claim for a call on each day that train orders were handled in the manner above described was sustained on behalf of the telegrapher at Coffeerville.

The next case was Award No. 1489. In that case there was a telegrapher stationed at Billings and also a telegrapher stationed at Enid. On two

occasions the telegrapher at Enid delivered orders to the conductor of a locomotive crane, authorizing the operation of that crane at or near Billings. The conductor lived at Enid, picked up the orders there, drove to Billings and there executed the orders with the locomotive crane. The claim was for two calls on behalf of the telegrapher at Billings. In denying the claim, the Board distinguished between the case before it and cases where orders were given to one train crew to be delivered to another train crew which was to execute them. The Board said:

"The facts in the two cases are quite distinct unless we adopt the theory suggested by the Committee that the conductor transported the orders from Enid to Billings and delivered them to himself at Billings, . . . But this would be to disregard the facts of the case and to set up a fiction in order to find a violation of the rule."

The Board distinguished Award 1167 because of the finding that there was not necessarily identity of personnel of the train crews. In view of that fact, the Board said that the delivery of the orders in that case may have been made by one train crew to another rather than executed by the same crew which received them, as in No. 1489.

Award 4819 involved the delivery of train orders by telegraphers at Astoria covering the movement of a train from Astoria to Seaside, where the crew laid over for eight hours or more, and also the return movement from Seaside to Astoria. Both movements were covered in one order and it was directed both to Engine 150 at Astoria and Engine 150 at Seaside "c/o C&E Work Extra 150 at Astoria." A telegrapher was regularly assigned at Seaside and the claim was for a call on each occasion when train orders were handled in the matter described. In denying the claim, the Board said:

"We could not sustain this claim without holding, in effect, that when the members of the crew received their orders at Astoria, they not only acted in their normal capacity as such, but also as agents for the delivery of their return orders to themselves at Seaside. This, it seems to us, assumes a most involved and somewhat anomalous situation and relationship."

Award 1167 was distinguished on the basis that the form of the orders was different—two separate orders instead of one.

The next Award, No. 5087, involved instances where train orders were delivered to the engineer of a train to be executed by the same engineer at a later point as engineer of another train. Telegraphers were employed at the points where the orders were executed, and claims for calls for these telegraphers were sustained. The Board rejected Carrier's defense based upon identity of personnel of the train crews who received and also executed the orders. The Board said:

"The scope of the train order rule in the Telegraphers' Agreement is not dependent upon the personnel of the train crews who are required to execute the train orders. . . . When Engineer Search of Extra 464 carried a train order . . . to be executed by Extra 481 . . ., he was not performing a duty required of the Engineer of Engine 464 but, on the contrary, he was performing the work of a telegrapher in delivering a train order to Extra 481. . . ."

Engineer Search was engineer of both 464 and 481 in this case. The Board went on to say:

"If the train order had directed the engineer and conductor to make both movements even though involving a change of engines, the result might well be different."

Award No. 5122, involving the same parties as Award No. 5087, also involved the execution of train orders by the same personnel who received

them, in connection with movements at later points, in some cases where no telegraphers were assigned. In these instances, claims were sustained on behalf of the senior idle extra employe.

Award No. 6124 sustained a claim for calls in a situation somewhat similar to that in Award No. 1167, on the basis that Awards 1167 and 5087 were controlling. The joint statement of facts in 6124 contained the same statement as did the Opinion in Award 1167: "Usually, but not always, and never necessarily, there is identity of personnel of the train crews involved."

The most recent case is Award No. 6609, wherein the train involved was *a C. B. & Q. train operating on C. B. & Q. track, Lyons to Broomfield, crossing C. & S. track at Longmont, and C. & S. track Broomfield to Denver*. It required train orders before entering C. & S. track at Broomfield. Telegraphers were assigned at both Longmont and Broomfield. Train orders were issued to the train crew by a telegrapher at Longmont to be executed at Broomfield. The actual train did not change, but it was operated as C. B. & Q. Train No. 188, Longmont to Broomfield, and C. & S. Train No. 5092, Broomfield to Denver. Claim for a call on behalf of the telegrapher at Broomfield was denied. The Board rejected the argument of the Petitioner that these were two separate trains and found that there was identity of personnel and identity of trains. The Board said in its Opinion:

"We are unable to deduce a violation of Rule 29 here by indulging in the hypothesis that this train crew took delivery of train orders addressed to them for execution for the purpose of themselves making a later delivery to themselves at the point of execution." (Rule 29 is similar to Rule 21 in the Agreement before us.)

In addition to these awards of the Third Division, Award No. 9 of New York Central Special Board of Adjustment No. 137, a case which had been docketed with the Third Division and was later withdrawn, was cited by Carrier. In this case, the engineer of Train 8524, Dunkirk to Titusville, received a train order upon leaving Dunkirk addressed to the engineer of Engine 8525, governing the movement of extra 8525 from Titusville to Dunkirk. The same crew operated both trains. The claim was for a call for the telegrapher at Titusville on the theory that the train order was delivered by the train crew of No. 8524 at Titusville. This claim was denied.

It is obvious that there has been a divergence of opinion in the Board's holdings in these awards, even though distinctions have been attempted based upon the form of round trip orders, see Awards 4819 and 5087, and upon identity or lack of identity of train, see Award 6609. In arguing these cases, attempts also have been made by the parties to distinguish situations based upon whether the orders called for the train to continue in the same direction or to return in the opposite direction, or whether trains had the same or different number or other designation. We do not think that this problem can be solved by further distinctions of fact and refinements and shades of interpretation of the words of the rule providing that no employes other than telegraphers will be permitted to "handle" train orders, in an attempt to reconcile these cases. We can only try to apply the underlying purpose of the rule to the facts before us. As to that purpose, early Award No. 86 stated: "Doubtlessly it was made for the purpose of preventing encroachments upon that work to which the employes in that particular craft were entitled." We can see no attempted or actual encroachment in the particular case before us, where the train order in question was executed by the same employe to whom it was delivered by a telegrapher; where there could have been no additional work for telegraphers had the order been delivered by the telegrapher at Calais rather than at Machias, which Petitioner asserts as the proper procedure; and where no telegrapher was on duty at Salmon Falls, at which point the order was actually executed. In these circumstances, we are persuaded to follow the views announced in Awards 1489, 4819 and 6609 that to hold that the engineer here transported the order from Machias to

Salmon Falls and delivered it to himself at the latter place would be "to set up a fiction," to assume "a most involved and somewhat anomalous situation and relationship" and to "indulge in a hypothesis" contrary to fact.

We affirm the right of telegraphers, proclaimed in many of our awards, to deliver train orders. We hold that on the particular facts and circumstances of this case, there was no delivery of a train order at Salmon Falls and, therefore, that the claim must be denied.

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 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 17th day of July, 1957.