Award No. 8327
Docket No. TE-7368

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, 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, that:

1. Carrier violated the Agreement between the parties hereto when commencing on the 10th day of August, 1953, and on other dates shown in paragraph 2 hereof, it required Agent-telegraphers at Calais, Maine, to leave train orders and clearance cards pinned to train register book, at such station, where such orders and clearance cards were picked up by conductor of Woodland Switcher, the following morning, prior to regular assigned hours of such Agent-telegrapher.

2. Violations as set forth in Paragraph 1 occurred on the following dates: August 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31, 1953. September 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 1953.

3. Carrier shall be required to compensate Agent-telegrapher (Burt Pullen or W. H. McKay) an amount equal to one call, under the Agreement, for each and every date, set out aforesaid, the Conductor of the Woodland Switcher was required to perform duties of Agent-telegrapher in handling train orders and clearance cards at Calais, Maine.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an Agreement, effective January 1, 1951, entered into by and between Maine Central Railroad Company, hereinafter referred to as Carrier or Company and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employes. The Agreement is, by reference, included in this submission as though copied herein word for word.

This dispute was handled, on the property, in the usual manner, to the highest officer designated by Carrier to handle such claims. The claims were denied and the dispute failed of adjustment. Such handling was in accordance with the provisions of the Railway Labor Act, as amended. The dispute, not having been settled by Carrier, in accordance with the Agreement, is submitted to Third Division, National Railroad Adjustment Board, for award. This Board has jurisdiction of the parties and the subject matter.

MANUAL DELIVERY OF A TRAIN ORDER MUST BE MADE BY A TELEGRAPHER.

The claim in the instant case is not supported by Agreement rules, including Scope Rule and Article 21—Handling Train Orders. It is not supported by the practice in effect on the property.

The only proper and fair conclusion which can be drawn from the instant claim is that the Employes are now attempting, thru the Third Division of the National Railroad Adjustment Board, to have placed on Article 21 of their current Agreement an interpretation which they did not request, discuss or attempt to sell during the negotiations which lead to the adoption of Article 21.

It is the position of the Carrier—the attempt now being made by the Employes thru the Third Division, National Railroad Adjustment Board, falls squarely within that portion of the Railway Labor Act, reading—

"General Duties

"First. It shall be the duty of all carriers, their officers, agents and employes to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions ....."

Claim should be DENIED. The Carrier respectfully so requests.

(Exhibits not reproduced).

OPINION OF BOARD: This dispute concerns the handling of train orders at Calais, Maine. The Organization claims a violation of Article 21, the Train Order Rule, which reads, so far as material:

"No employe other than covered by this Agreement and Train Dispatchers will be permitted to handle train orders . . ."

On a number of dates in August and September, 1953, the Agent-telegrapher at Calais was required to leave the train order for the Woodland Switcher on the train register book for the conductor of that train to pick up the next morning at a time when the Agent-telegrapher was not on duty. It is contended that the Agent-telegrapher should have been called each morning to make personal delivery of the train order to the conductor, and that he is due call pay for each day.

The ordinary method of handling train orders is for the telegrapher to receive them from the dispatcher, prepare the necessary number of copies, check them for accuracy, and deliver them, along with the required clearance card, to the crew of the train to whom addressed. Even in the absence of a train order rule, this work has quite generally been held to be exclusively the work of telegraphers under the Scope Rule. Our decisions are uniformly to the effect that work that has customarily and traditionally been performed exclusively by a class or craft named in the Scope Rule is reserved exclusively to that class or craft, and that permitting or requiring some employe outside that craft to perform such work is a violation of the Scope Rule. Thus a train order rule ordinarily adds nothing to a scope rule; it merely removes any possible doubt that the handling of train orders belongs to the telegraphers.

We have had many cases involving the copying of train orders, and the transmission and delivery of train orders, by employes other than telegraphers. In these cases we have held that the Scope Rule or the Train Order Rule was violated. Awards 709, 749, 1096, 1878, 1820, 2926, 2930, and many others. These cases are unquestionably sound.

But it will be noted that the facts of those cases differ in one very material respect from the facts here: in every one of them an employe other than a telegrapher did some act of "handling" a train order—a yardmaster, the conductor of another train than the one addressed, or someone else not covered by the Scope Rule of the Telegraphers' Agreement. In the case before

us, however, no human hand intervened between the telegrapher and the train crew to whom the order was addressed. No one but a telegrapher "handled" the train order. He put it on the train register, and the conductor to whom it was addressed picked it up.

Now there is a line of cases involving such facts, but before considering them it may be best first to discuss the case on principle. It is a fundamental principle that whether to have work done or not is in the Carrier's sole discretion. I know of no decision, apart from those to be discussed, which have held a carrier obligated to have certain work performed. It is only when a carrier decides to have work performed that the rights of employes to perform that work arises. If the wrong employe performs it, a violation of the Agreement has occurred. That is the extent to which our decisions in general have gone. The Scope Rule protects telegraphers from having their work taken by others. The Train Order Rule here is written in just such terms. It prohibits employes "other than covered" from handling train orders.

Since no employe "other than covered" handled the train orders in question, it seems too clear for argument that the Train Order Rule has not been violated. To hold that the Rule requires the Carrier to permit a telegrapher to do work that the carrier does not want done, is not only to twist and distort the plain words of the Train Order Rule but also to ignore the fundamental principle that it is for the carrier alone to decide what work will be done. If we should so hold, then I suppose it would follow that where a telegrapher has in the past made 6 copies of each train order he is entitled in the future to make 6 copies even though the carrier only requires 4 copies.

So much for principle, and we turn now to precedents. There is a long line of decisions upholding the Organization's contention in this case. Contrary as they are to principle, and wrongly decided according to Award No. 1821 as well as according to the many dissents, we have sought to find the basis for the erroneous departure from principle. That basis is to be found in a careless expression, not necessary to the decision, in Award No. 709. That case involved the copying of train orders by one not covered by the agreement, and correctly held the carrier in violation. But the referee said, "the handling of a train order should include not only the physical process of passing it from hand to hand in the performance of its function but also the work involved in its preparation." It was "the work involved in its preparation" that was involved in that case, and the reference to "passing it from hand to hand" was merely an unstudied reference to the fact that manual delivery was customary on that property and was not in issue.

In Award No. 1166, the first case in point, the Referee picked up that obiter dictum of Award 709, and made it the basis of the decision, along with an operating rule which required personal delivery, but which was not part of the agreement between the parties, and Award No. 1096 which was not in point. That decision (Award No. 1166) was clearly wrong.

It may not be inappropriate to insert a word here as to the propriety of considering operating rules. An operating rule, since it is promulgated by the Carrier unilaterally, confers no rights on the employes. It may be voided or amended unilaterally. The rights of the employes are to be found in the Agreement alone. But where a provision of the Agreement is ambiguous, requiring a consideration of practice to determine its meaning, it is entirely proper to consider operating rules for the light they may throw on practice. We have done this many times. But where the provision of the Agreement is clear and unambiguous, it needs no interpretation. No evidence of any sort, operating rule or otherwise, is admissible to vary the terms of a clear provision of the Agreement. Such was the situation in Award No. 1166 and it is the situation here. The train order rule here is quite clear and it has not been violated. No one other than a Telegrapher handled the train orders in question.

Other decisions took the easy path of following the precedent of Award 1166, some of them relying also on operating rules, and some even relying on

decisions not in point, namely decisions where an employe other than a telegrapher had copied a train order or had carried it to the train crew addressed—decisions obviously correct but not in point.

As case followed case, some of the referees followed the precedents with obvious reluctance. An example of this is Award No. 4057, where the decision states that the Referee in Award No. 3670 was "less than enthusiastic" in following the precedents. Referee Lloyd Garrison, in following the precedent set by Award No. 1166, was so disturbed by it that he wrote a very lengthy memorandum justifying the following of erroneous decisions in certain circumstances (Award No. 1680). The circumstances here, where there are decisions both ways, do not require the blind following of either line of cases to the disregard of principle.

Until recently only one case had intervened in this unbroken line of cases to state a contrary conclusion. Referee Yeager, in Award No. 1821, expressly held the precedents wrongly decided. In so holding he said: "No single detail . . . was entrusted to anyone not covered by the rule in question."

The latest decision to which my attention has been called is that of Referee Langley Coffey, in Award No. 7343, decided in 1956. In that case, as in the one before us, the telegrapher left the train order on the train register book, and claimed a call. There was no train order rule, but the Referee held that "the work of handling train orders on the lines of this Carrier is typical of work reserved" under the Scope Rule. So, as pointed out earlier in this Opinion, the absence of a train order rule was immaterial to the case: the Scope Rule gave the same rights as a train order rule could have given. The claim was denied on principle, without any reference being made to the precedents.

So we have a situation where we must decide either on the basis of a long line of precedents which we think unsound and contrary to principle, or on the basis of principle supported by two Awards, Nos. 1821 and 7343. We must either repudiate our latest decision supported by one earlier decision and principle, or confirm our latest decision and repudiate the earlier decisions as erroneous. We have no question as to our duty. It is to confirm Award Nos. 1821 and 7343, and thus confirm sound and long-established general principles. No one is entitled to perform work that the carrier does not want performed by anyone. Neither the Scope Rule nor the Train Order Rule is violated except when some employe other than a telegrapher performs telegrapher's work. For these reasons the claim will 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 Employe involved in this dispute are respectively Carrier and Employe 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 30th day of April, 1958.