

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad, that:

1. Carrier violated agreement when on August 2, 1955, it caused, required or permitted Mr. R. Stella, an employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Form 19 Train Order No. 44 at Smithboro, New York.
2. Carrier shall compensate the senior idle telegrapher on Auburn seniority district for one day (8 hours) at the rate of pay applicable to Smithboro for the violation occurring as aforesaid.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between the Lehigh Valley Railroad Company, hereinafter referred to as Carrier or Management and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The agreement was effective February 1, 1948 and is, by reference, made a part hereof as though set out herein word for word. This dispute was handled on the property in the usual manner through the highest officer designated by Management to handle such disputes. Management has declined the claim of Employees and the dispute remains unadjusted. This dispute involves interpretation of the collective bargaining agreement and under the provisions of the Railway Labor Act as amended, this Board has jurisdiction of the parties and the subject matter.

This dispute concerns the handling of a train order (Form 19), by a track car operator at Smithboro, New York; such employe not being covered by the Telegraphers' Agreement.

Smithboro is a point on Carrier's line of railroad where Carrier formerly maintained a position of agent-telegrapher under the Telegraphers' Agreement. The position was abolished on December 19, 1952.

The Organization did attempt to persuade the Carrier to adopt a rule applicable at blind sidings. Failing in the attempt to negotiate such a rule, the Organization now seeks to obtain the equivalent of such by asking your Board to sustain the instant claim in the absence of a rule to support it. In view of the many awards this Board has rendered against such action, we feel certain that the Board will not even attempt to do so.

That the Board will not make agreements nor write rules has been decided in many awards. A few such awards of the Third Division are:

2029	2744	4270	4386
2612	3244	4304	4819
2622	3737	4322	5597

Of course, there are many more by this Division, as well as the other Divisions of the National Railroad Adjustment Board. Also, many awards have been rendered as to the merits of the type of claim here under consideration. Those which have been decided on rules similar to ours have been denied. To mention a few, the Third Division has denied such claims in award numbers:

1400	4050	5080	5582	5866
1553	4208	5081	5583	6959
1999	4259	5374	5584	
2002	5079	5564	5585	

Particular attention is directed to Award No. 4259 and Award No. 6959; the rule involved in both of those awards is practically identical with our Rule 32. There is no question that the meaning of the rules in those awards and our rule is identical. The rules in those awards are also confined to points where telegraph or telephone offices are located and where operators are employed, etc. The Carriers' position in those awards reflects practically the same history of the rule involved as in the instant case.

The Carrier respectfully submits that this claim is entirely without merit, and requests the Board to deny this claim.

The facts presented in this submission were made a matter of discussion with the Committee in conference on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim presented here involves the same parties and the identical issue set forth in this Division's Award 8146 which held that the Agreement between this Carrier and The Order of Railroad Telegraphers was not violated when it caused, required or permitted employees not covered by that agreement to receive, copy and deliver Track Car Permits at Mountain Top, Pennsylvania.

That a Train Order rather than a Track Car Permit form was used in the instant case, and that in Award 8146 the work was done by section foremen and signal maintainers, are not material to our decision here because in each case the Petitioner asserts an exclusive right to the work involved, whether it be handling track car permits or train orders, and past practice does not support that position.

Accordingly, we find and hold that Award 8146 is controlling and dispositive of the instant claim. This claim, therefore, must be dismissed. (See Award 8458.)

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 Employee involved in this dispute are respectively Carrier and Employee 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 dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November, 1958.