

Award No. 8661
Docket No. TE-7828

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware and Hudson Railroad, that:

1. Carrier violated the agreement between the parties hereto when on September 4, 9 and 18, 1954, it caused, required or permitted train service employes, not covered by Telegraphers' Agreement, to carry Train Orders Nos. 3, 7 and 3, respectively, from Whitehall to Castleton and there make delivery of such orders to Conductor and Engineer of trains to which addressed.

2. Carrier shall be required to compensate Agent-Telegrapher, Castleton, an amount equal to one call, under the agreement, for each and every date, as set forth above, and all subsequent dates when, in violation of the agreement, he was deprived of work to which he was entitled, in handling such train orders.

3. Further, Carrier should be required to permit joint check of records to ascertain dates when such subsequent violations occurred.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an agreement, effective July 1, 1944, entered into by and between The Delaware and Hudson Railroad Corporation, hereinafter referred to as Management or Carrier, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employees. 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 Management of Carrier in accordance with the agreement, is submitted to the Third Division, National Railroad Adjustment Board for Award. This Board has jurisdiction of the parties and the subject matter.

The dispute concerns the handling of train orders at Castleton, New York.

not be given to an inferior train until the signatures of the conductor and engineman of the superior train have been sent to the Superintendent."

The rules agreement covering telegraphers became effective November 1, 1937, and was revised effective July 1, 1944. Train orders have been handled in the manner set out in this claim for at least 38 years prior to the time the agreement became effective and for 17 years since it became effective without protest or claim.

In the presentation of this case to the highest officer on the carrier designated to handle grievances, the General Chairman referred to the Telegraphers' Agreement but made no specific reference to any rule that would support the claim. It is presumed that claim is based on the Train Order Rule. The carrier contends that there was no violation of the Train Order Rule as the train orders were sent by a train dispatcher and received and copied by a telegrapher.

Claim is not supported by agreement and long-established practice and carrier respectfully requests that it be denied.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: It is contended by Petitioner in this case that the Respondent Carrier violated the agreement when it permitted or required train service employees, not under the Telegraphers' Agreement, to carry train orders from Whitehall to Castleton and at that point deliver them to a train crew to which they were addressed.

The record shows that there is an agent-telegrapher employed at Castleton with regular hours 7:00 A.M. to 4:00 P.M., Monday through Friday. Petitioner contends that the Agent-Telegrapher at Castleton should have been given a call on each occasion to handle the train orders in question.

There is no material dispute with respect to the facts in this case. It is agreed that the train orders in question were sent. It is further agreed that they were given to a conductor to be carried from Whitehall to Castleton, and they were delivered in each instance to a train crew at Castleton. Therefore, the question to be determined goes to an interpretation of the agreement in application of these admitted facts.

This matter of handling train orders has been before the Division many times, and numerous awards have been made dealing with the issue. Where the fact situations involved have been essentially the same as here, and where the agreement provisions were essentially the same, the Division has generally sustained the claims. From the very early days of the Division this matter has been ruled upon in case after case. In the instant situation we are confronted with a case involving a point where an agent-telegrapher is employed. We are also confronted with an agreement which contains a specific rule governing the handling of train orders. Hence we do not have a situation where the only contract provision is a general scope rule.

Article 23 (a) of the applicable agreement applies to this situation. It reads as follows:

"The handling of train orders at telegraph or telephone offices is restricted to employes under the scope of this agreement and Train Dispatchers, except in emergency. In emergency, if an employe under the scope of this agreement is available or can be promptly located he must be called to handle train orders and if not so called will be paid as provided by the call rule."

This is a specific rule and it is clear in its requirements. Respondent Carrier defends its action mainly on the grounds of past practice and on the fact that *operating rules* apparently contemplate "in care of" train orders. Time and again the Division has held that both of these defenses must yield to a specific agreement rule such as that quoted immediately above.

No considerations have been brought to our attention in the instant case which would justify a reversal of the Division's many awards sustaining claims under such circumstances. Neither is it necessary here to review all of the awards dealing with the handling of train orders. Suffice it to say that "handling" has been interpreted to include delivery of train orders when issued under such circumstances as those involved in the instant case. Respondent Carrier is, in effect, asking the Division to reverse this long series of decisions. However, it has made no showing which would justify such action. It is appropriate to observe that a reversal of such a series of awards would be justified only for the most compelling reasons. Since such compelling reasons are not present in the instant case we have no alternative but to sustain the claim in view of all the facts, and in view of the clear terms of Article 23 (a) of the applicable agreement. In reaching this conclusion we are following a long line of awards made by the Division. Awards 86, 709, 1167, 1168, 1680, 1713, 1719, 2087, 2926, 5013, 5087, 5122, 5810, 5871, 6678 and many others.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January, 1959.

DISSENT TO AWARD NO. 8661, DOCKET NO. TE-7828

Award 8661 is in error and we dissent thereto for the reasons set forth in our Dissent to Award 1096 and our Dissents to numerous subsequent awards on the same issue. The record shows that the practice of delivering train orders "in care of" has been in effect under operating rules on this Carrier since 1899, and that the first agreement between the parties to this dispute was effective on November 1, 1937.

/s/ W. H. Castle

/s/ J. F. Mullen

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp