Award No. 8758
Docket No. TE-8279

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago & Eastern Illinois Railroad, that:

CLAIM NO. 1

1. The Carrier violated the Agreement between the parties hereto when and because on Decoration Day, May 30, 1950, it required or permitted Conductor Cutler to copy and handle a train order at Hustle, Illinois.

2. The Carrier shall now be required to compensate the senior idle telegraph service employe, extra in preference, in the amount of one day's pay of eight hours at the applicable rate of pay for the work of which he was deprived.

CLAIM NO. 2

1. The Carrier violated the Agreement between the parties hereto when and because on August 8, 9, 11, 14, 15, 16, 17 and 18, 1950, it required or permitted a train service employe to copy and handle train orders at Coaler, Illinois.

2. The Carrier shall now be required to compensate the senior idle telegraph service employe, extra in preference, in the amount of a day's pay of eight hours at the applicable rate of pay for each and every date the violation occurred for the work of which he was deprived.

CLAIM NO. 3

1. The Carrier violated the Agreement between the parties hereto when and because on September 11, 1950, it required or permitted Conductor Hoffman to copy and handle train orders at Perrysville, Indiana.

2. The Carrier shall now be required to compensate the senior idle telegraph service employe, extra in preference, in the amount of one day's pay of eight hours at the applicable rate of pay for the work of which he was deprived.

CLAIM NO. 4

1. The Carrier violated the Agreement between the parties hereto when and because on Sunday, August 20, 1950, it required or permitted Conductor Wheeler to copy and handle a train order at Reilly, Illinois.

2. The Carrier shall now be required to compensate Agent-Operator C. P. Thompson for a 'call'—three hours at time and one-half rate—for the work of which he was deprived.

CLAIM NO. 5

1. The Carrier violated the Agreement between the parties hereto when and because on August 25 and 30, 1950, it required or permitted a train service employe to copy and handle train orders at Ellis, Illinois.

2. The Carrier shall now be required to compensate Agent-Operator E. J. Cheffer for a 'call'—three hours at straight time rate —for each date set forth above for the work of which he was deprived.

CLAIM NO. 6

1. The Carrier violated the Agreement between the parties hereto when and because on July 9, 1954, it required or permitted a train service employe to copy and handle a train order at Rossville Junction, Illinois.

2. The Carrier shall now be required to compensate the senior idle telegraph service employe, extra in preference, in the amount of one day's pay of eight hours at the applicable rate of pay for the work of which he was deprived.

CLAIM NO. 7

1. The Carrier violated the Agreement between the parties hereto when and because on November 13, 1954, it required or permitted a train service employe to copy and handle a train order at Beecher, Illinois.

2. The Carrier shall now be required to compensate Agent-Operator D. C. Myers for a 'call'—three hours at straight time rate —for the work of which he was deprived.

CLAIM NO. 8

1. The Carrier violated the Agreement between the parties hereto when and because on November 22, 1954, March 1 and 3, 1955, it required or permitted Conductors to copy and handle train orders and Clearance Forms 'A' at Mt. Vernon Junction, Indiana.

2. The Carrier shall now be required to compensate the Senior idle telegraph service employes, extra in preference, in the amount of one day's pay of eight hours at the applicable rate of pay for each day for the work of which they were deprived.

CLAIM NO. 9

1. The Carrier violated the Agreement between the parties hereto when and because on January 10, 1955, and February 5, 1955, it required or permitted train service employes to copy and handle train orders at Goodwine, Illinois.

2. The Carrier shall now be required to compensate the senior idle telegraph service employes, extra in preference, in the amount of one day's pay of eight hours at the applicable rate of pay for each day for the work of which they were deprived.

EMPLOYES' STATEMENT OF FACTS: An Agreement bearing effective date of May 1, 1945, is in effect between the parties to this dispute and the rules cited are from the Agreement.

These disputes were handled on the property in the usual manner up to the highest officer designated by the Carrier to handle such claims, and failing of adjustment are hereby submitted to your Board for adjustment.

CLAIM NO. 1

Hustle, Illinois, is located on main line of the St. Louis Subdivision between Woodland Junction, 15 miles to the North, and Villa Grove, 47 miles to the South. This is a single track territory where trains are operated by Manual Block System, Train Orders and Timetable Rules. Conductor Cutler with Extra 204 North at Hustle on May 30, 1950, copied and handled train order number 232. (Exhibit 1-A.) The Order was issued to this train by the dispatcher, located in Danville, Illinois, and copied by the Conductor from the Operator-Leverman at Glover, who was instructed by the dispatcher to further transmit it to Hustle.

There was no emergency condition existing at this time.

CLAIM NO. 2

Coaler, Illinois, is located on the main line of the Danville Subdivision, between Chicago, 79.6 miles to the North, and Danville 43.6 miles to the South. Double track is in operation with trains operating under Timetable, Train Orders and automatic Block System Rules. Two passing tracks are located here.

A Conductor of Locomotive Crane A-748 at Coaler copied and handled train orders as follows:

Date of Violation	Train Order Number	Exhibit Number
August 8, 1950	245	2-A
August 9, 1950	264	2-B
August 11, 1950	241	2-AA
August 14, 1950	242	2-BB
August 15, 1950	238	2-CC
August 16, 1950	255	2-DD
August 17, 1950	262	2-EE
August 18, 1950	245	2-FF

instances orders are transmitted by the dispatcher to the telegrapher by telephone rather than by telegraph. It is recognized that it is proper for the telegrapher to receive the order by telephone from the dispatcher. It is just as logical and just as well recognized that it is proper for the telegrapher to deliver the order to the train employe in the same manner—that is, by telephone. A contention that the operator must make personal and physical delivery of the order is wholly without foundation under the agreement rules and required an exceedingly strained and contorted application of the English language and common sense.

It is not economically feasible for the railroad to maintain an operator at every siding or wayside station where it may be necessary to issue train orders. The trains involved in the claims here presented were locals and work extras which were not moving continuously in one direction, but which were required to move back and forth in the performance of their work. Accordingly, it was not possible to issue orders from one open station to another as might be the situation in the case of a passenger or through freight train.

In the circumstances involved in this docket it was absolutely necessary that the orders be transmitted to the train at the time and point where located. Until the proper orders had been received, the train could not move. Under these circumstances, physical delivery of the order to the conductor by the operator who received it from the dispatcher was an impossibility.

Accordingly, in conformity with past practice, the order was delivered by the operator to the train employe over the telephone. In the most restrictive application of the rules the order was handled by an employe subject to the agreement—and the agreement was not, therefore, violated. The claims are without merit and should be denied.

For the alleged violations, Petitioner claims compensation varying from a "call' 'to a day's pay. In some instances the recipient of this gratuity is identified—in others claims is made for unnamed and unidentified persons.

It is Carrier's position that the claims are without merit, however, the proper compensation, as prescribed by the agreement here controlling for circumstances where an employe is in fact not called in his turn for service, is a call.

As to claims for unnamed persons, it is Carrier's position that fundamental in each claim is the proposition that damage or loss to persons named and identifiable is a prerequisite to a penalty such as here demanded. Further, it is pertinent that the parties hereto consumated an agreement dated August 21, 1954, containing among other things a rule governing the handling of claims and grievances. Paragraph (a) of said rule provides in part "All claims or grievances must be presented in writing by or on behalf **of the employed involved** * *" This rule became effective January 1, 1955, and it is Carrier's position that in all claims subsequent to that date, only claims for named employes are valid.

(Exhibits not reproduced.)

OPINION OF BOARD: The dispute, consisting of nine (9) claims, primarily concerns the use of the telephone to communicate train orders to the crews of trains. While many awards have been cited in regard to the use of the telephone to communicate other types of communications, it is the train orders we are concerned with here. The Claimant's positions is that the

Agreement by its scope section rule No. 1, and rule No. 27 re train orders, restricts the handling of train orders to telegraphers. The interpretation of these sections by the Claimant amounts to the position that except in an emergency, the contract reserves to the telegraphers exclusively, the right to receive, copy, and deliver train orders. Let us look at Rules 1 and 27.

Rule No. 1, or scope rule does not define any work area, but merely defines the application of the Agreement. Its very first line begins

> "This schedule will govern the employment and compensation of telegraphers, telephone-operators * * *."

The section deals with working conditions, not areas of work. It, therefore, becomes necessary to ascertain the definition or definitions (as to what work comes within the scope of the agreement) from usage, custom, tradition and the disclosed facts in the record. The question cannot be determined by reference to the Scope Rule of the Agreement alone.

Rule 27 has far greater application in regard to areas of work, especially as to train orders. It reads:

> "No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located except in an emergency, in which case the telegrapher will be notified and paid for the call."

It is obvious that rule one does not control. Rule 27 and past usage must be the keystone of the Claimant's position. Rule 27 is not too helpful to the Claimant and must be read with practical consideration for what was expected by both Organization and Carrier when the Agreement was worked out. The order would originate with the dispatcher who would give it to the train crew personally, if possible. If the point of delivery were at a distance, he would sent it to a telegrapher for delivery. Historically the only means of transmission was by telegraph wire dispatched to telegrapher, or telegrapher to telegrapher. The telegrapher, armed with his chattering key and flying pencil was the most accurate means of transmission. In time the Carrier made use of his talents and accuracy by having him also keep a record of train orders transmitted, as well as transmitting the order. The work of transmitting and delivering train orders between the dispatcher and the train crew can be done by no other employe. It is exclusively telegrapher's work. That is the meaning of Rule 27. But there are two exceptions or qualifications to Rule 27. One: It does not apply to train dispatchers, or obviously the conductor who is to receive it. Two: It applies only at "telegraph or telephone offices where an operator is employed." Rule 27 is silent as to procedure where there is no operator employed.

The advent of the telephone has made the telegrapher's key as obsolete as the teleprinter has made his pencil. The telephone is easier, quicker, and simpler to transmit the same message. The telegraph line displaced the pony express, but now it too has taken its place with the fire horse, electric car, and the gas light. This is progress. But the telegraphers have progressed, too, and they have taken on new functions with the use of the telephone and many other inventions. Their position has changed, and so have conditions. For that reason earlier awards which were then controlling are not controlling under the changed conditions of today.

Telegraph stations had to be manned to receive and send messages, and for that reason they were spotted at busy points where the expense of constant attendance was economically sound. Private telegraph stations were indeed rare, and usually limited to newspaper offices, large business establishments, and the like. Not so the telephone. Almost every house is equipped with one, and they are spotted along highway and byway. It cannot be conceived that either the Carrier or the Organization would want to limit the effective use of the telephone. Neither can it be conceived that there is any intention on the part of the Carrier to wilfully evade the terms of the Agreement. However, it canot be argued that because the flexibility of the telephone will allow its installation (for both economic and technical reasons) at points where telegraph was not, and is not, feasible, that a telegrapher must follow each such installation. That would be similar to putting a buggy whip on each automobile and bumpers on airplanes. Nor does the argument that train orders present a special case have real significance. Some early awards so rule (86, 2926), (and some early manufacturers did put buggy whips on automobiles) but we have had technical advances. The telephone is more than just the talking wire of the early days.

Train orders are vital to the safety of the railroad public. If the dispatcher hands a train order to a conductor, the conductor can always point to the order and signature as his authority for action. At distant points, formerly, by use of telegraph, he was not able to intercept the order, but now he can, by use of the more flexible telephone. But a telephone train order lacks signature and is subject to error on receipt. This requires a pinning down of responsibility. This can be done by requiring the order to be transmitted from dispatcher to telegrapher to telegrapher, between two points, by the appropriate means of transmission, and then back to the conductor at an intermediate point by telephone, where he can copy the order, repeat it, receive it "complete," and proceed with its execution. The purpose of operating rules 208, 210 and 211, are thus accomplished.

Carrier's Rule 217, requiring a signature, is impossible in circumstances involving telephonic transmission. But Rule 217 also requires the telegrapher to transmit and dispatcher to receive signatures with the intentinon that the actual written signature not be received, but merely acknowledgement via the telegrapher that he has the signature.

> "Under such circumstances 'complete' must not be given to the order for an inferior train until the train dispatcher has received the signatures of the conductor and engineer of the superior train."

Thus it can be seen that what is expected in rule 217 is confirmation of signature, i.e., assent, and not the signature itself. The practice can be extended without violence to common sense.

We have no question here of the abolition of telegraphers' positions by this practice. We have no question here (though it has been argued) that the practice could lead to the use of but one telegrapher for an entire system. If, and when, these situations do arise, they will be appropriately dealt with. They are not before us at this time.

The issue raised by the Carrier, namely laches in failing to make a timely claim, not having been raised on the property, cannot be considered here.

Summing up the principles above we find that:

1. The agreement scope rule does not by definition control the issues here to be decided.

2. The agreement rule 27, restricts the handling of train orders Only where an operator is employed.

3. That "handling" of train orders does not mean exclusively physical delivery from the telegrapher to conductor, but can include electronic delivery. Telegraphers are in no sense mere delivery boys.

4. That ultimate recipients of train orders (Conductors, etc.) were contemplated within the meaning of rule 27, and are not included within the language of "handling."

Specific Claims

Application of these principles to the specific claims produces the following results:

Claim No. 1. The copying of a Train Order May 30, 1950 by Conductor Cutler at Hustle, Illinois. Hustle is between Woodland Junction (15 miles North) and Villa Grove (47 miles South). The Order was issued at Danville, Illinois, and copied from the operator at Glover. There was no operator at Hustle at the time. The presentation of the Organization on Page 173 of the record indicates that formerly there had been an operator at Hustle but the position had been abolished in the past. There is no presumption of evasion in the abolishment of the position, and the record contains no showing that volume of traffic at Hustle would require an operator. The claim is for an isolated instance. The claim will be denied.

Claim No. 2. The copying of Train Orders at Coaler, Illinois on August 8, 9, 11, 14, 15, 16, 17, 18, 1950. Coaler is between Chicago (79.6 miles North) and Danville (43.6 miles South). The orders were issued by the dispatcher at Danville and copied from the operator at Watseka Tower, Illinois. There had formerly been an operator at Coaler. The frequency of the violation indicates there should have been an operator there for the days in question. A "Call" is related directly to full work week, and there being no operator on duty, the claim is correct for an 8 hour day. The claim is allowed.

Claim No. 3. The copying of a train order at Perrysville, Indiana September 11, 1950. Perrysville is located between Danville (11.1 miles North) and Terre Haute (43.3 miles South). The Conductor Hoffman copied Train Orders 33 and 34 from the operator at Walz. There had formerly been an operator at Perrysville, but the position had been abolished. There is no evidence of volume of traffic which could indicate an evasion of the agreement. Claim will be denied.

Claim No. 4. The copying of train orders at Reilly, Illinois on August 20, 1950. There was an operator position here, but being Sunday, he was off duty. The claim for a call will be allowed.

Claim No. 5. The copying of a train order on August 25, and 30 at Ellis, Illinois. There are operator positions at Ellis, who were not on duty at the time. The claims for Calls will be allowed.

Claim No. 6. The copying of a train order on July 9, 1954 at Rossville Junction, Illinois from operator at Hoopeston, Illinois. There was no operator

position at Rossville Junction, though there formerly had been one. The record shows no volume of traffic. The claim will be denied.

Claim No. 7. The copying of a train order at Beecher, Illinois November 13, 1954. There is an operator position at Beecher. The claim for a call will be allowed.

Claim No. 8. The copying of a train order at Mt. Vernon Junction November 22, 1954, March 1, and March 3, 1955. The order of November 22, 1954 was copied directly from the dispatcher at Danville. The claim for November 22, 1954 will be allowed for 8 hours compensation.

Fort Branch is in the vicinity of Mt. Vernon. There were formerly two operators at Fort Branch which positions have been abolished. However there is no showing in the record of sufficient volume to conclude an evasion of the agreement. Claims will be denied.

Claim No. 9. The copying of train orders Jan. 10, 1955, and Feb. 5, 1955 at Goodwine, Illinois. Goodwine, Illinois is located between Woodland Junction (9.7 miles North) and Villa Grove (52.8 miles South.) A position of Telegrapher was abolished on December 6, 1954. The orders in question were copied from telegraphers via telephone at Bryce and Woodland Junction. The record does not show any greater volume of traffic than the two alleged violations. It is a matter of degree and the intentional evasion of the agreement cannot be presumed. The claims 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 Employes involved in this dispute are respectively Carrier and Employes 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 Claims 1, 3, 6 and 9, denied; Claims 2, 4, 5 and 7 sustained; Claim 8 sustained as to November 22, 1954, and denied as to March 1 and March 3, 1955.

AWARD

Claims 1, 3, 6 and 9, denied.

Claims 2, 4, 5 and 7, sustained.

Claim 8 sustained as to November 22, 1954, and denied as to March 1 and 3, 1955.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March, 1959.

DISSENT TO AWARD 8758, DOCKET TE-8279

It has often been said that an award of this Board is no better than the reasoning behind it. In that view, which has now become axiomatic, Award 8758 is one of the poorest ever to have been conceived by this Division. It is so unresponsive to the issue involved, and so detrimental to good relations between railroads and their telegraphers that I feel impelled to make an exception to the long held tradition of the Labor Members to refrain from writing dissenting opinions.

The dispute involved nine separate claims where members of train crews, using railroad owned telephones, performed the work of receiving, copying and repeating train orders, and then delivering those orders to other crew members for execution. These acts took place at several different stations and under a variety of circumstances. But in no instance was it even alleged that an emergency existed.

At three of the stations, those in Claims Nos. 4, 5 and 7, telegraphers were employed but were not on duty at the time the train orders were handled by trainmen. Those telegraphers were subject to the provisions of Rule 27, and since their claims have been properly sustained (though without the proper reason being stated) I find no fault with that portion of the award.

At the stations named in Claims Nos. 1, 2, 3, 6, and 9 telegraphers had formerly been employed, but their jobs had been abolished at various times in the past. At some of the places, Goodwine for example, abolishment of the telegrapher positions had occurred quite recently.

At the location involved in Claim No. 8, no telegrapher had ever been employed, but telegraphers had been employed at a station a short distance away. Those telegraphers handled the necessary train orders for movement on the Mt. Vernon branch until their jobs were abolished.

In all of the instances but one the work was handled in such a manner that the Carrier's records showed the orders were first transmitted to a telegrapher at some place along the line and by him relayed to the trainman at the station where they were required. In one case the train order was transmitted directly to the trainman by the dispatcher.

The parties have made no change whatever in either the scope rule or Rule 27 in more than thirty years. Awards 6321 and 6322 of this Division held that it is a violation of the Telegraphers' Agreement for a trainman to receive a train order by telephone at a place where telegraphers are not employed. One of these awards, 6321, was concerned with the same station involved in Claim No. 6 of Award 8758.

Congress created the Adjustment Board for the purpose of interpreting agreements as written and applying them to the facts submitted by the parties. It did not endow this Board with the power to change or modify agreements because of changed conditions or otherwise.

Congress also provided for use of neutral referees who would have no interest in the result of an award other than its correct interpretation and application of the agreement involved in a dispute.

With these facts in mind let us consider the "Opinion of Board" in some detail.

The first paragraph—or perhaps the first few paragraphs—of such an "Opinion" should state the most pertinent facts and contentions in order to define at least the central issue to be considered. Here, none of the facts are stated, and only the basic contention of the Employes is set forth. The manner in which that contention is stated, and the approach to consideration of Rules 1 and 27, in the first paragraph, suggests immediately an intention to refute an argument rather than deal with an issue.

In fact, nowhere in the entire Opinion of Board is there any indication that the Referee was dealing with issues arising from conflicting contentions of the parties. The document appears to be little more than an attempt to support an opinion that changed conditions ought to be considered as authority for the Carrier to dispense with the services of a telegrapher under some circumstances.

But no such issue existed. The record left no doubt of the true issue. The Carrier did not attempt to repudiate Awards 6321 and 6322, although it obviously was not pleased with them. The record showed that numerous claims had been settled in the manner indicated by those awards. The record also showed that the Carrier thought it had devised a method of avoiding the continuing effect of these awards by having the train orders relayed to the trainmen through a telegraph office at some other location. The Carrier was undoubtedly aware of the conflicting nature of our awards on the subject—exemplified by Awards 1145 and 3881—and evidently hoped we would follow the 1145 line rather than that of 3881. That was the only real issue presented by the record. But the Referee chose to ignore that issue, although it was carefully pointed out to him both in oral and written argument.

In the next several paragraphs, the "Opinion" discusses the effect of the scope and train order rules. This discussion begins with a dogmatic statement which will not survive even a casual investigation into the purpose of such scope rules. When one says that:

> "Rule 1, or scope rule does not define any work area, but merely defines the application of the Agreement."

he is simply ignoring the obvious fact that the subject of a collective bargaining agreement is bound to be the "work area" of the craft involved, for work is the only commodity the individuals of that craft have to offer.

Many awards have carefully noted that this type of scope rule, general in character and listing the various classifications which describe the craft involved, is to be taken as manifestation of the parties' intent to reserve to those employes the work traditionally performed by such craft.

This obviously logical and correct interpretation of scope rules was thoroughly presented to the Referee, with supporting documentation. But he chose to follow the much smaller number of awards which refuse to look beyond a layman's view of the bare words and hold that such rules do not relate to work.

Also thoroughly presented to the Referee and carefully documented, was the principle that the traditional work of telegraphers, reserved to them by the scope rule manifestation of intent, is the work of transmitting and receiving orders, messages and reports of record. We cited unimpeachable authority to show that the best example of such work is the handling of train orders.

The majority, in its "Opinion", said not one word about these important precedent factors, but proceeded blithely to the unsupported conclusion that, "It is obvious that rule one does not control". Then followed an even more ridiculous discussion of Rule 27.

Let us carefully observe the paragraph which immediately follows quotation of Rule 27. It goes on to say that, "Rule 27 and past usage must be the keystone of the Claimant's position". The record, of course, does not support such a statement. But by ascribing such a keystone to the Employes' contentions, the majority furnishes a key to the maze of semantical "gobbledegook" which follows. The author simply did not understand his subject.

Continuing with the next sentence, we find the amazing statement that "Rule 27 is not too helpful to the Claimant and must be read with practical consideration for what was expected by both Organization and Carrier when the Agreement was worked out". Thus begins to emerge the pattern of incomprehension which characterizes the entire Opinion.

When Rule 27 was incorporated into the existing agreement telegraphers were fully employed at the stations involved in this case and were handling all train orders required. There could have been no expectation of changing that situation. Rule 27 meant then exactly what it means today. There has been absolutely no change in either the scope rule or Rule 27. Award 5992, and others like it, correctly state the purpose and applicability of such rules.

The paragraph proceeds from the ridiculous to the absurd. Consider, if you will, as railroad men, these sentences which now appear in an official document of an agency created by act of Congress:

> "The order would originate with the dispatcher who would give it to the train crew personally, if possible. If the point of delivery were at a distance, he would send it to a telegrapher for delivery. Historically the only means of transmission was by telegraph wire dispatcher to telegrapher, or telegrapher to telegrapher. The telegrapher, armed with his chattering key and flying pencil was the most accurate means of transmission. In time the Carrier made use of his talents and accuracy by having him also keep a record of train orders transmitted, as well as transmitting the order."

Such abysmal nonsense would be comical if it were not part of so serious a document as an award of this Board dealing with contractual rights and obligations of the parties.

When the Referee first proposed an award in this case I spent a considerable period of time with the Carrier Member of the panel trying to agree upon deletion or change of such language. We did agree in many respects, and then discussed the matter with the Referee. The result speaks for itself —we did not accomplish much.

It was pointed out that although there may have been rare occasions when a dispatcher would personally deliver a train order to a crew, it is not the customary or traditional method of effecting delivery, and on that portion of the railroad involved in this case would be practically impossible. The Referee could not seem to understand that a dispatcher usually is located in an office at some distance from the tracks; that his territory is many miles—sometimes hundreds of miles—in length, and that there may be a dozen or more trains at various places on that territory, all needing constant supervision by train orders.

Nor could he seem to understand the various functions of a telegrapher. Contrary to the attempted witticism, telegraphers are not "armed with his chattering key". A telegraph key does not chatter. It responds delicately to the skilful touch of the operator, transmitting with musical precision the intelligence necessary to safeguard the operation of a railroad. The only chattering is in the minds of those ignorant of the genious of Samuel F. B. Morse and those who followed him.

Furthermore, no one worthy of the name "telegrapher" would stoop to the use of a pencil, flying or gliding, to copy a train order. Such work, properly performed, requires the firm but even pressure of a stylus, used in connection with metal plate and double-faced carbon paper. A Referee, of course, would not be expected to know about such things. By the same token he should confine his remarks to those areas of knowledge which he does understand. This award does nothing so well as to prove again the wisdom of the old adage that "A shoemaker should stick to his last".

Each sentence of the Opinion could similarly be analyzed and shown to be nothing more than the fantasy of a fertile but misplaced imagination. I have not the time to be so specific, but will have to be content with some more general observations.

It seems to be the fashion lately to consider the art of telegraphy as being as obsolete as the fire horse. This is not a true comparison. The Morse telegrapher is not extinct. Fifty thousand of us can still perform with key and sounder—and those instruments are still used by most American railroads. But that is not the point. The fire horse may be gone, but **firemen** still put out fires. Likewise, even if the electro-magnetic telegraph were to disappear **telegraphers** would still be required to do the communication work. The "Opinion" notes this fact, but fails to give it its proper significance. The Referee seems to think that the right to telegraphers to perform communication work has changed because telephones have largely replaced the Morse telegraph for the communication of train orders.

This obvious opinion points up in glaring detail the error of the Award. The parties to this dispute long ago recognized that the right of "telegraphers" to do the Carrier's communication work included use of the telephone. They expressed this agreement by inclusion of the classification "telephone-operators" in the scope rule. This classification has equal status with that of the classification "telegrapher", and has been equal for at least forty years.

I have examined hundreds of awards and decisions of this and earlier boards which deal with rights of telegraphers to perform communication work by telephone, going all the way back to the World War I period of forty years ago. Every one of those decisions considered a scope rule which included a "telephoner" or "telephone-operator" classification along with that of "telegrapher". Practically all of these decisions recognize the intent of such classifications to be the reservation of communication work to members of the craft which has traditionally performed it—even if a telephone rather than the telegraph is being used to perform the work.

The change in conditions came forty years ago—and the parties changed their scope rule accordingly. The Referee was merely forty years late in detecting the changed conditions, and apparently because he has only now discovered the fact he thinks the change has just recently occurred. Thus he came to the error of declaring that:

"For that reason earlier awards which were then controlling are not controlling under the changed conditions of today."

There are no awards on the subject at hand which antedate the use of the telephone to communicate train orders. More significantly, there are no awards which antedate scope rules which contain both "telegrapher" and "telephone-operator" classifications.

The rights of employes rest upon their argreements. And neither the Agreement here being considered, nor the use of the telephone on this railroad has been changed in any substantial way for more than thirty years. No change of any kind has been agreed upon since the issuance of Awards 6321 and 6322.

The Referee's dissertation upon the universality of the telephone only displays further his lack of knowledge concerning the subject matter of the Opinion. The telephones used were a part of the private communication system built and maintained by this Carrier for its sole use. It is an inanity to deal with telegraphers' rights by noting that almost every house is equipped with a telephone, and that they are spotted along highway and byway. C.&E.I. Railroad telephones are not so located.

I will refrain from commenting upon the Referee's discussion of the Carrier's operating rules, except to note that this discussion will provide the material for much merriment among railroad men who read it.

The Opinion closes with a statement to the effect that this docket presents no question of the abolishment of positions by the acts complained of. On the face of the record that is a correct statement. But because of the manner in which the dispute is considered by the majority, the exact reverse is true.

Keeping in mind the fact that no change has been made in the scope rule for more than thirty years, and that telegraphers were then employed at—or very near in one case—each of the stations involved, and that all such positions (except those in Claims 4, 5, and 7) have since been abolished, the question of such abolishment is indeed present.

When the Carrier needed train orders for its business at each of these stations on occasion, it is obvious that the need could only be met by re-establishment of the abolished positions. The Agreement had not been changed, remember. The effect of the Carrier's actions was to re-establish these positions for the time necessary to perform the work. But instead of using telegraphers to do the required work, the Carrier used trainmen, employes outside the scope of the Agreement.

Our awards have come nearer a final settlement of such cases than any other. They hold that a position once established pursuant to the terms of an agreement cannot be abolished and its work assigned to employes of another craft. But this principle, along with many others equally well established were unhesitatingly ignored. No wonder the Carrier Members saw fit to vote with the Referee for this award, even if it does sustain monetary payment for about half of the claims submitted, and even if it does contain such statements as this:

"The work of transmitting and delivering train orders between the dispatcher and the train crew can be done by no other employe. It is exclusively telegraphers' work."

Only at one point does the "Opinion" even casually refer to the one real issue in this dispute. In point 3 of its summation, the majority somewhat vaguely contends that the "handling" of train orders ". . . can include electronic delivery". Nowhere in the Opinion is there any indication that the majority considered and decided the point raised by the Carrier's contention that the violation found by Awards 6321 and 6322 was overcome by having the train orders transmitted first to a telegrapher at some other station and then relayed by him to the trainman. But this reference in the "Summing up" seems to indicate that some such idea was in the mind of the author.

First we must observe the absurd terminology "electronic delivery". The word "electronic" denotes the phenomenon of passage of an electric current through a circuit consisting in part of a stream of free electrons. It has come to be used in a popular sense to refer to any device which makes use of the conductivity of electrons. But no such action takes place in a railroad dispatching telephone. Furthermore, a train order is not an electric current; it is a communication on paper. And paper cannot negotiate a path made up of electrons. These train orders were not delivered electronically, therefore, the words are absurd.

But if this was meant to be a sophisticated reference to the manner in which the telephone was used it is equally absurd. This dispute arose over the **receipt** by the trainmen of the communications, their reduction to writing, and their delivery at the place of **receipt.** No complaint was made about the **transmitting** of the orders, either here or in the cases decided by Awards 6321 and 6322.

The issue on this point was not settled by this award, and that was the only issue before us.

I want to say, finally, that I have no doubt of the Referee's sincerity, or of his ability as a jurist. But the qualifications for successfully deciding disputes arising from failure of the parties to agree on application of their agreement are not limited to sincerity and judcial ability. There must also be an understanding of the Board's function. Particularly must there be understanding of the limitations upon our power imposed by Congress. We have no power to vary the rights or obligations of the parties, as contained in their agreements. And when an award boldly proclaims that rights arising from an agreement have evaporated because of "changed conditions" that award is improper.

Award 8578 is such a one. It settles nothing. It furnishes fuel for further dispute, and its adoption was a disservice, not only to the employes and this Carrier, but to the railroad industry generally.

To the extent indicated and for reasons set forth I disagree with Award 8578, and take this means of formally registering my dissent.

J. W. Whitehouse,
Labor Member.

SPECIAL CONCURRING OPINION, AWARD NO. 8758,
DOCKET NO. TE-8279

After discussing various points in the Opinion, the Majority in Award No. 8758 holds:

"Summing up the principles above we find that:

1. The agreement scope rule does not by definition control the issues here to be decided.

2. The agreement rule 27, restricts the handling of train orders only where an operator is employed.

3. That 'handling' of train orders does not mean exclusively physical delivery from the telegrapher to conductor, but can include electronic delivery. Telegraphers are in no sense mere delivery boys.

4. That ultimate recipients of train orders (Conductors, etc.) were contemplated within the meaning of rule 27, and are not included within the language of 'handling'."

The Majority thus holds that the Scope Rule is inapplicable and that Rule 27, the Train Order Rule, applies to the handling of train orders only at a telegraph or telephone office where an Operator is employed. It further holds that "handling" of train orders does not mean exclusively physical delivery from an operator to a conductor, but can also include electronic delivery. Concerning the latter, the principle is that a conductor can, without any violation of the Agreement resulting, receive a train order from an operator via telephone.

In applying the enumerated principles to the specific claims, Claims Nos. 1, 2, 3, 6, 8(in part), and 9 should have been denied because all involved the same factual situation. In each of those claims, a train or engine service employe, while at points where no operator was employed, received train orders, via telephone, from operators on duty at other locations. However, the Majority departed from the applicable principles in Claim No. 2 and, in some manner, found a violation, for it is stated:

"* * * The frequency of the violation indicates there should have been an operator there for the days in question. * * *"

The sustaining of Claim No. 2 is not only inconsistent with the denial of the other claims, but is in direct conflict with the enumerated principles held by the Majority to be applicable. Nothing in such principles has anything to do with "frequency"; inasmuch as there is no violation of the Agreement by electronic delivery of train orders to a train or engine service employe, the fact that train orders happened to be so received on several days at a point where no operator was employed cannot make a violation out of that which is held in the first instance not to be a violation of Agreement. The result is contradictory.

The undersigned concur in the result reached by the Majority in denying Claims Nos. 1, 3, 6, 8 (in part), and 9, but, for the reasons stated, must dissent to the misapplication of the principles otherwise.

/s/ J. F. Mullen
/s/ R. M. Butler
/s/ W. H. Castle
/s/ C. P. Dugan
/s/ J. E. Kemp