

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, 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 the 5th day of November, 1954, it required and permitted Mr. Wescott, a train service employe, not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Orders Nos. 14 and 15 at Sherman, New York.

2. That Carrier violated Agreement between the parties hereto, when on the 10th day of November, 1954, it required and permitted Mr. Wescott, a train service employe, not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 18 at Sherman, New York.

3. That Carrier violated the Agreement between the parties hereto, when on the 12th day of November, 1954, it required and permitted Mr. Wescott, a train service employe, not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 18 at Sherman, New York.

4. That Carrier violated the Agreement between the parties hereto, when on the 19th day of November, 1954, it required and permitted Mr. John Day, a train service employe, not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 6 at Howards, New York.

5. That Carrier violated the Agreement between the parties hereto, when on the 20th day of November, 1954, it required and permitted Mr. Kilburn, a train service employe, not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 19 at point between Essex and Wadhams, New York.

6. That Carrier shall be required to compensate the senior idle telegrapher (extra in preference) under the Telegraphers' Agreement, on the Champlain Division Seniority District, for one day (8 hours), at the minimum telegrapher's rate on such Division, for each and every date of such violations.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an Agreement between the Delaware and Hudson Railroad Corporation, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employees. The Agreement became effective on the 1st day of July, 1944. A copy of said Agreement is on file with this Board, and is, by reference, included in this submission as though copied herein word for word.

These disputes involve the handling of train orders, by employees other than those covered by the Telegraphers' Agreement. The disputes were handled on the property in the usual manner to the highest officer designated by Carrier to handle such claims, and were denied. The disputes, therefore, constitute unadjusted disputes between Carrier and Employees, and this Board has jurisdiction of the parties and the subject matter under the Railway Labor Act, as amended.

Sherman is a passing track beginning about one mile south of the station at Port Henry and extends southward about one mile from the north switch. There is no station located at that point but there is a train dispatcher's telephone. On November 5, 10 and 12, 1954 (Employees' Exhibits 2, 3, 4 and 5), train orders were received, copied and delivered by train service employees at this point.

Howards is a point on Carrier's line of railroad, located approximately 7 miles north of Port Henry. A train order was received, copied and delivered by train service employee, at this point, on November 19, 1954. (Employees' Exhibit 6.)

Exhibit 7 shows copy of train order handled by train service employees at a point between Essex and Wadhams on November 20, 1954. The distance between Essex and Wadhams is shown in Carrier's time-table to be 6.7 miles.

Each of the above points, are located on Carrier's main-line railroad between Whitehall, New York and Rouses Point, New York. In each instance the train order was dictated by the train dispatcher to several offices simultaneously. At other stations, telegraphers (telephoners) received and copied the train orders and later delivered same to the Conductor and Engineman of the train to which addressed. At Sherman, Howards and between Essex and Wadhams the train orders were received, copied and delivered by train service employee. It will not be disputed by Management that the services performed by the train service employees were exactly the same as those performed by the telegraphers copying the same orders addressed to other trains.

The Scope Rule of the Telegraphers' Agreement reserves to employees covered thereby, the exclusive right to handle train orders. Handling train orders includes the receiving, copying, repeating and delivery of same. Train orders are received from the train dispatcher. They are to be copied by a telegrapher. They are to be repeated by a telegrapher. They are to be delivered by a telegrapher. The requiring and permitting employees other than those covered by the Telegraphers' Agreement to perform this work was a violation of our Agreement.

In Award 7153, the claim was dismissed based on long-established practice under existing rules. The following is quoted from the Opinion in Award 7153:

"Both parties were fully cognizant of the provisions of Rule 217, and the practice under it, at the time of the adoption of their Agreement in 1939. Had there been any serious intention to change this, more definite language to that end should have been added in the Scope Rule or at some other point in the Agreement. Failure to do this in 1939, and failure to do it in the 1946 negotiations leads us to the conclusion that the parties have not agreed to change the long-established practice. It is a matter for further negotiation. It is not for us to read into the language of the Scope Rule something which the parties themselves have quite obviously omitted."

In connection with Item 5 of claim, it is the carrier's position that claimant was not available to protect the service due to the fact that he resided twelve (12) miles from the location of his employment, the service was required; therefore, his claim is not supported by the agreement rules and should be denied.

With respect to Items 1, 2, 3 and 4 of claim, all claims should be denied account not supported by agreement rules and accepted practices thereunder.

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: On each of the occasions here involved conductors received train orders by telephone from the dispatcher. In the case of Items 1, 2, 3, and 4 this occurred at points where telegraphers were not and never had been employed. In the case of Items 5 it occurred at a point where there was regularly assigned Agent-Telegrapher, at a time when he was not on duty.

The applicable agreement contains a scope rule in common form and a Train Order Rule (Article 23), reading in applicable part:

"The handling of train orders at telegraph and 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."

The Train Order Rule clearly applies to Item 5. Award 8260 from the same property involves a like situation. Carrier cannot be heard to contend that the Agent-Telegrapher was not available because no attempt was made to find him. The date, the train order and the number of the train involved were identified in the claim presented on the property and error as to the location of the telephone used was not fatal to the claim, where Carrier knew the correct location. Claimant under Item 5 is entitled to be paid as provided in the call rule.

As to the other items of the claim the Organization relies on the Scope Rule. As plainly appears from its terms and as held by many awards, this

rule sets out the class of positions to which it applies rather than specifying the work restricted to those covered by it, so it is necessary to look to other rules or tradition and practice to determine what work is reserved exclusively to the employees under the agreement.

The Train Order Rule restricts the handling of train orders at telephone and telegraph offices to telegraphers and dispatchers, but there is no inference therefrom that handling train orders at other points is restricted to them; the implication appears to be to the contrary.

Since the exclusive right here sought is not given by any rule of the agreement we must seek for tradition and practice. Traditionally the receipt of train orders was restricted to telegraphers; only they knew the Morse code. The telephone was not only a substitute for the telegraph but it also permitted much more extended communication and at more places than possible with the Morse code. Infrequent calls for train orders at a blind siding arising from unexpected situations are not in substitution for telegraph service but rather they employ an additional means of communication not known before the telephone appeared. We cannot believe it material whether received from a telegrapher or dispatcher. The docket before us shows long continued practice on the property for conductors to handle train orders directly from the dispatcher at blind sidings and the unsuccessful attempts by the Organization to obtain revision of the Train Order Rule to give telegraphers the exclusive right to that service as here contended for.

The awards cited by claimant arising on this property involve situations similar to that in Item 5 of this claim, so are not applicable here. Many awards are cited by each party supporting its position. It is impossible to harmonize them, and a referee can only follow his own thinking.

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 violated as stated in the opinion.

AWARD

Items 1, 2, 3 and 4 denied; Item 5 sustained in accordance with opinion and findings. Item 6 sustained to extent stated in opinion, otherwise denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1960.