

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad), that:

1. The Carrier violated the Agreement between the parties when on November 1, 1955, it issued train orders Nos. 54, 71, 74, 75 and 77 at Baldwin, Louisiana, addressed to Extra 15 West at Franklin, Louisiana, in care of Extra 15 East for the delivery at Franklin, in order to provide for the movement of Extra 15 West Franklin to Baldwin.

2. Carrier shall, for such violation pay to T. J. Feske, regular assigned Telegrapher-Clerk at Franklin, entitled to the work of handling train orders at this station, a call as provided in Rule 17A.

EMPLOYES' STATEMENT OF FACTS: Franklin and Baldwin, Louisiana, are stations on the Lafayette Division of Carrier's railroad, located at Mile Post 102 and 106 respectively, from New Orleans, Louisiana. The stations are on Carrier's main line four miles apart.

At page 2 of the Wage Scale, effective March 1, 1955, for positions covered by the Agreement, the stations are listed thusly:

Franklin	Agent	2.125
1st trick	Telegrapher-Clerk	1.865
3rd trick	Telegrapher-Clerk	1.815
Baldwin	Agent-Telegrapher	1.925
	Telegrapher- Clerk	1.805
	Telegrapher- Clerk	1.805

Wherefore, premises considered, the claim of the instant case should in all things be denied.

All evidentiary matter referred to or presented herein has in substance been the subject of correspondence and/or conference with the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts, which are not in dispute, are fully stated in the Submission of the parties.

The stations involved are Baldwin and Franklin, Louisiana. They are on the Main line of the Carrier four miles apart. At the former station telegraphers were continuously on duty. At the latter there were two shifts of telegraphers, a first and third trick. The Claimant, a 3rd Trick Telegrapher at Franklin, was not on duty at the times set out in the Claim but lived near the Telegraph Office and was available on call.

The runs to which the train orders involved applied were for Extra 15 West from Franklin to Baldwin, turn around or return trips of the runs Extra 15 East, Baldwin to Franklin.

The crews to which the orders were issued were the same on both legs of the trips. The orders were copied and delivered by a telegrapher at Baldwin. Though the orders were separate for each leg of the runs they were delivered simultaneously to the crews as they were about to leave Baldwin.

With the foregoing factual situation in mind, we consider the Scope Rule and the Rule specially invoked:

Rule 17 of the controlling Agreement:

"No employes 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, * * *."

In the opinion in Award 1489, this Board, Referee Thaxter, it is said, respecting a rule like Rule 17, there is nothing in the Rule which requires "that train orders should be handled through one station rather than through another." To like effect Award 6609.

The Rule is intended to assure that train orders which are required to be handled at a certain Telegraph or Telephone Office shall be handled only by those covered by the schedule of the Telegraphers' Agreement.

If it can be said that there is any ambiguity in the Rule, it can be only that it does not localize the office from which a train order must be handled and interpretation may be aided by resort to custom and practice. Likewise custom, practice and tradition may be invoked in construing the Scope Rule.

In this connection, the Carrier offers (1) An Operating Rule of the Transportation Department effective in substantially the same form on Carrier's lines for more than 60 years. (2) The affidavits of 13 employes

and former employes of long standing were, or had been, telegraphers with the Carrier or were acquainted with the practice of handling train orders on its lines.

Objection has been interposed to the consideration of the affidavits because they are dated subsequent to the denial of the Claim on the property and, therefore, the parties did not have before them the full facts as now incorporated in the record; that, as this Board is an appellate body the record must be restricted to that which was produced during the processing of the Claim on the property and prior to its final denial by the Carrier.

Standing alone, on the foregoing state of the record, there is merit in the objection because of the dates of submission of the affidavits. However, our attention is directed to page 41 of the record, the Carrier's Original Submission, wherein it is said:

"All evidentiary matter referred to or presented herein has in substance been the subject of correspondence and/or conference with the Organization."

This statement was not subsequently challenged or denied, and, insofar as the record discloses, was not objected to until the panel discussion before the Referee. It is, therefore, reasonable to assume that the Board prior to its deadlock on this submission considered the affidavits in its deliberations. For these reasons we consider the affidavits, although neither their subject matter nor the Operating Rule of the Carrier is vital to the conclusion which we reach on the merits.

Rule 217 of the Regulations of the Transportation Department of the Carrier, provides:

"A train order to be delivered to a train at a point not a train-order office, or at one at which the office is closed, must be addressed to C. & E. at, Care of, and forwarded and delivered by the employe in whose care it is addressed. When sent in care of the conductor or engineer of the train, the number of the order must be shown in the usual manner on clearance for the train making delivery the same as if addressed to it. * * *."

Conformance to this regulation may explain the failure to incorporate the orders for the return leg of the trip with the orders as to the first leg of the trip.

The orders, though separate, for the runs Extra 15 East and Extra 15 West were in effect orders for the trips Baldwin to Franklin and return.

We are aware that this Board has held in Award 86, 1096 and 5871, that the foregoing Regulation of the Carrier is in conflict with Rule 17 of the controlling Agreement but the conflict was restricted to the facts in these submissions. We do not say that this Regulation may not conflict with Rule 17 in instances not involved here.

Typical of the 13 affidavits submitted is that of O. W. Hardin, who says, that since 1928 he worked on the railroad of the Carrier, subject to the Telegraphers' Agreement; that he was conversant with Operating Rule 217 and that "during my employment I have, at numerous times, handled

train orders in instances where a crew handled orders from an initial point to a turn-around point where operator was off duty for execution of the return movement, where personnel of the train did not change but was identical on the return trip." These affidavits are helpful as they relate to the interpretation which the parties have given to the Scope Rule and Rule 17 in connection with Regulation 217 through-out the years.

Upon the facts developed in this submission, we are convinced that there was no violation of any rule of the applicable Agreement invoked.

We are supported in our position by Award in Docket No. 2, Special Board of Adjustment No. 132, Award No. 9, New York Central Special Board of Adjustment No. 137, and Award in Docket No. 85, Special Board of Adjustment No. 132. All of these Awards carry short opinions. We quote a part of the last paragraph of the opinion in Award in Docket No. 85, *supra*, because the emphasized part thereof epitomizes the operative facts which controlled that Award and likewise control the instant Award.

"The claim here apparently is based upon the contention that an employe not covered by the Telegraphers' Agreement handled train orders to be delivered to a train other than his own. We see no merit in such a contention. The record reveals that the Carrier has recognized that orders should not be delivered by the crew of one train or engine to the crew of another train or engine when the two are unrelated. **In this instance, however, the same crew operated both trains. In effect what was done was no different than giving a round trip order.**" (Emphasis ours.)

In Award 8012, this Board, Cluster, Referee, quotes with approval from the opinion in Award 6609, this Board:

"We are unable to deduce a violation of Rule 29 here by indulging in the hypothesis that this train crew took delivery of train orders addressed to them for execution for the purpose of themselves making a later delivery to themselves at the point of execution."

(Rule 29 above referred to in Award 6609 is practically identical with Rule 17 here.)

The Organization has cited numerous Awards, among which are Nos. 1096, 1167, 1168, 5871 and 6124, and which in the language employed, tend to support the claim here asserted.

Without stating in detail the differentiation to be made in the facts in the cited Awards from those found here, suffice to say that, in no one of them was the train order involved to be carried out by the crew on the same train to which the order was first given and, with one exception, Award 6124, the orders had to be and were transmitted by another than a telegrapher to a second crew for execution.

The Agreement has not been violated.

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;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 4th day of February, 1960.

DISSENT TO AWARD 9223, DOCKET TE-8942.

The author of this award obviously permitted himself to be so misled into consideration of irrelevant matters that he completely lost sight of the true issues involved.

One of the most revealing facts upon which the position of the employees largely rested was not even mentioned in the Opinion of the majority. That is the fact that until shortly before the claim date the telegraph office at Franklin was a continuously operated train order office, handling all train orders required for trains at that point. The Carrier abolished the second shift telegrapher's position, and instead of calling one of the remaining telegraphers to perform any necessary work of the abolished position it resorted to the action complained of: Requiring train crews to handle the train orders necessary to movement from Franklin during the hours of the abolished telegrapher's position.

This Board has so consistently frowned upon such actions that a sustaining award was clearly indicated for this reason alone. Award 5431 stated this principle as follows:

"One of the elementary principles early established by decisions of this Division of the Board and so uniformly adhered to that it needs no citation of awards to support it, is that a position established pursuant to the provisions of an existing agreement cannot be abolished and its work assigned to employees belonging to another craft."

Instead of applying this elementary principle to the facts that the Carrier did abolish such a position and did assign its work to trainmen in the instance cited, the majority attempted to justify a denial award by holding that the actions complained of did not constitute the "handling" of train orders at Franklin.

The first effort to justify such a holding is nothing more than the well known exercise of demolishing the figurative straw man. Award 1489 is cited as authority for the opinion that rules like Rule 17 here do not require "that train orders should be handled through one station rather than through another." Nowhere in the record do the Employees contend that the rule required the orders to be handled at Franklin. The Employees contended that the orders were handled at Franklin by the trainmen, and contended that when any handling of such orders is desired or required by the Carrier at a telegraph or telephone office, such as Franklin, the rule requires that a telegrapher be called to perform the necessary work.

The next such effort is equally fallacious. This consists of the erroneous comment about operating rule 217, and the observation that:

"The orders, though separate, for the runs Extra 15 East and Extra 15 West were in effect orders for the trips Baldwin to Franklin and return."

The Referee indicated, during panel argument of the case, that he held some such opinion. Therefore, I took care to direct his special attention to Awards 1456, 5087 and 6124 where practically the same factual elements were involved. I emphasized my reliance on Award 5087 where precisely the same factors were involved, and where the identical method of supplying necessary orders to the same crew for its return trip were held to be "handling" within the well established meaning of the train order rule.

The only one of these vitally applicable awards even mentioned in the Opinion is Award 6124. Conspicuously absent is any reference to Award 5087, the principal decision upon which I relied for support of my argument on this point. The reason for such absence is obvious.

Another example of the palpable error of this award is the reference to the Award in Docket No. 85 of Special Board of Adjustment No. 132. The Referee says that the emphasized portion of his quotation from that award "epitomizes the operative facts which controlled that Award and likewise control the instant Award".

When that Special Board award was cited by the Carrier Member during panel argument I pointed out its inapplicability for the reason that the agreement there involved does not contain a rule prohibiting the "handling" of train orders at telegraph or telephone offices. In other words, there was no standard train order rule before the referee in that case. I requested comparison of both the rules involved and the result reached in that award with those of Award 5087 and the present case. Apparently my request received little attention.

For these and other equally obvious reasons Award 9223 is in error, and I take this means of recording my dissent.

J. W. Whitehouse,
Labor Member.