

Award No. 9318
Docket No. TE-8319

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (Pacific Lines) that:

1. The Carrier violated the provisions of the Agreement between the parties when it required or permitted the conductor in charge of Extra 2345 West, at Carnadero to receive verbal instructions in lieu of a train order at Carnadero by telephone, January 6, 1954.
2. The Carrier by this violative act established in fact a telephone office at Carnadero, California, under the Telegraphers' Agreement by requiring or permitting an employe not covered by said agreement to perform work covered by the agreement, thereby depriving the senior idle telegrapher of a day's pay.
3. The senior qualified extra telegraph service employe, or if no senior extra employe available, then the senior idle regularly assigned qualified telegraph service employe at the nearest location to the point on the division where the Carrier permitted or required a train service employe to receive verbal instructions in lieu of a train order, be compensated eight (8) hours' pay at the minimum rate applicable for this work of which deprived.
4. On each date in each instance subsequent to January 6, 1954 that the violations are permitted, the Carrier shall pay the senior qualified idle extra telegraph service employe, or if no senior extra telegraph service employe available, then the senior idle regularly assigned telegraph service employe at the nearest location to the point on the division where the violation occurs, eight (8) hours' compensation at the applicable rate.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement between the parties bearing date of December 1, 1944 (Reprinted March 1, 1951, including revisions) and a Memorandum of Agreement dated December 9, 1953, which was in effect on the date involved in the instant claim.

OPINION OF BOARD: The Claim is that there was a violation of the Agreement on January 6, 1954, when the conductor in charge of Extra 2345 West, Carnadero, California received "verbal instructions in lieu of a train order" by telephone from the train dispatcher at San Francisco. There is a telephone booth at Carnadero with a direct connection with the dispatcher's office, but there has never been a telegrapher's office at Carnadero. Extra 2345 had come in on the Hollister branch and before entering the main line it was necessary to learn whether regular trains 71 and 99, which were due there earlier, had passed. Learning from the dispatcher that they had passed, the conductor proceeded with Extra 2345 to his destination.

Specifically, the incident is claimed as a violation of Rule 29 of the Agreement, as amended by Memorandum of Agreement dated December 9, 1953. Rule 29 is entitled "Handling Train Orders", and the material portions are as follows:

"Section (a). No employe other than covered by this agreement and train dispatchers shall 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 emergency, in which case the employe shall be paid for the call. (Emphasis added.)

* * * * *

"Section (c). If train orders or other messages of record governing the movement of trains are **copied** by persons other than those specified in Section (a) of this rule in other than emergencies as defined in Section (e) of this rule at a location where an employe under this agreement **is not** employed, the senior qualified idle extra telegrapher, or if no senior extra telegrapher is available then the senior idle regularly assigned qualified telegrapher at the nearest location to the point on the division where the train order is **copied**, * * * shall be * * * allowed a day's pay," etc. (Emphasis added.)

No emergency is involved. Section (a) is not applicable, since it applies to locations where an operator is employed, which is not the case at Carnadero. It provides clearly that where an operator is employed no one else shall handle train orders, even in case of emergency, without the operator's being paid for a call.

On the other hand, Section (c) relates to locations where operators are **not** employed, and provides only that if train orders are copied there a telegrapher shall receive a day's pay. It is obvious that the parties' intention was to differentiate between the two situations mentioned in Sections (a) and (c); and while copying train orders is one phase of handling train orders, it is only one limited phase.

Since Section (c) relates to locations at which operators are not employed, the question is whether the telephoned information to the conductor constituted the copying of a train order. If a train order were handled at all it was certainly not copied; and we must give effect to Section (c) as written by the parties.

As noted above, in the claim the information received by the conductor is called "verbal instructions in lieu of a train order". Elsewhere in the record it is called "a verbal train order". But actually it was neither. The conductor did not receive a train order during the conversation; he merely

inquired whether the trains scheduled to precede his on the main track had gone, and received an affirmative answer. Even if that information can be construed as "a verbal train order" or as "verbal instructions in lieu of a train order", the handling certainly cannot be construed as the copying of a train order. Thus in any event it is not forbidden by Rule 29 as amended.

It is not claimed that the use of telephones on the property is within the exclusive jurisdiction of the Telegraphers. But "OS" work and the handling of communications of record are claimed as exclusively theirs, and it is claimed here in the Employees' Reply of May 1, 1956, that the conductor announced his arrival at Carnadero to the dispatcher, that the latter made it of record by transcribing it on the train sheet, and that this therefore constituted OS work by the conductor. However the Carrier denied that it was made of record, and introduced as Exhibit "B" in its Answer to the Employees' Reply, a photostatic copy of the train sheet for January 6, 1954, the first column of which refers to this train and shows no such entry. It is thus unnecessary to discuss this point further.

Claimants' contention that the telephone call amounted to a train order or its equivalent, is based on Carrier's Operating Rule 83 which provides that a train must not leave a junction "until it has been ascertained that all superior trains due have arrived or left", etc., and that "visual identification, register check, or train-order check of a section, will be evidence that all preceding sections of the same schedule have also arrived or left". In the Employees' Reply to Carrier's Original Submission they say: "the only way in which a train can leave a branch line and enter the main track is by visual identification, register check, or train order check. The record shows that there was no visual identification of superior trains; neither was a register check supplied. Thus, there was only one method left—that of a train order check", etc.

Several things are wrong with this argument. First it is not true that "the only way in which a train can * * * enter the main line is by visual identification, register check, or train order check". Operating Rule 83 provides that these three items "will be evidence", not the only evidence. And even if the three were exclusive, it would not follow that because the phone conversation was neither the first or the second, it must therefore be the third. It could be a fourth kind of evidence, even though not authorized by the rule. Finally, Rule 83 is an Operating Rule, and not part of the Agreement; so that even if the three kinds of evidence were exclusive they would have no bearing on this question.

Since the telephone conversation did not constitute a train order, an oral train order, verbal instructions in lieu of a train order, the copying of a train order, OS work, or other work shown to be exclusively within the scope of the Organization, the claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March, 1960.