

Award No. 10241
Docket No. TE-9161

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Walter L. Gray, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE & 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 September, 1955, it caused, required or permitted Conductor Croteau, in charge of Passenger Train No. 7, to handle (receive, copy and deliver) Train Order No. 203 at Plattsburg, New York.

2. Carrier will be required to compensate P. M. Quinn, first shift operator Plattsburg, who was ready, willing and available to perform the work of handling such train order, for one call, account violation set forth above.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement effective July 1, 1944, entered into by and between The Delaware and Hudson Railroad Corporation, hereinafter referred to as Carrier or Company, 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 through the highest officer designated by Carrier to handle such claims. The claim was denied by the highest officer and remains an unadjusted dispute. The dispute involves an interpretation of the collective bargaining Agreement and not having been settled by Management in accordance with the Agreement, is submitted to this Division under the provisions of the Railway Labor Act, as amended. This Board has jurisdiction of the parties and the subject matter.

The dispute involves handling of train order by a train service employee (Conductor Croteau) at Plattsburg, New York on September 5, 1955.

At Plattsburg there are two shifts of telegrapher (telephoner) service. The first shift (6:00 A. M. to 2:00 P. M.) is owned by P. M. Quinn. The second shift begins in the afternoon and is concluded prior to midnight. No operator is on duty thereafter until 6:00 A. M.

"Thus, we are led by the inescapable conclusion that Rule 58 on this property, by reason of the record here before us, and the issue as framed, implies a reasonable intent that at points such as here in question, and under the peculiar facts and circumstances of the case, train orders could be copied by others than telegraphers without penalty. See Awards 1145, 4516, 4259. We find these awards especially well reasoned and quite persuasive.

In Award 5866, Referee Douglass, which involved copying train orders by others than telegraphers, the claim was denied and the following is quoted from the Opinion:

"Under the provisions of Rule 29 of the Agreement it is our opinion that section (a) would have been violated by the copying of train orders by train service crews if an operator had been employed at Pastura. We are unable to agree with the carrier in its contention that these train orders were copied on a voluntary basis.

"The train orders that were copied by train service crews do not appear to have been necessitated by emergency, but rather in an effort to keep the trains moving with a minimum of delay. But the controlling part of Rule 29 (a) insofar as this case is concerned is that part which qualifies the restrictions by limiting its application to offices where an operator is employed."

It is the carrier's position that claim should be denied account Telegrapher P. M. Quinn not available to perform the service required, and long-established practice, without claim or protest, of others than telegraphers copying train orders at points where telegraphers were not employed or not on duty.

The claim is not supported by agreement rules and practices thereunder 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 part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The dispute in this case centers around the Agreement by and between the parties dated July 1, 1944 which Agreement is in evidence and made a part of the record.

The principal dispute is in connection with Rule 23 which is the Train Order rule and reads in part:

"(a) 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 promptly be located he must be called to handle train orders and if not so called will be paid as provided by the call rule."

It is agreed by both parties that there was no emergency.

It is evident from the record that P. M. Quinn, first shift operator, was ready, willing and available to perform the work of handling the train order. This being true and since he was not called the Claim will be sustained.

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 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of December, 1961.