

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Raymond E. McGrath, Referee**

---

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on The Chesapeake and Ohio Railway, that:

1. Carrier violated the agreement between the parties on each of the dates, April 23, 24, 30, May 1, 2, 3, 4, 7, 8, 9, 10, 14, 15 and 16, 1956 when an employe, or employes, not subject to said agreement were required or permitted to handle train orders at Coney (Stevens Yard, Ky.);

2. Carrier be required to pay to the senior idle employe, on the district, extra in preference, who are determined by a joint check of the Carrier's records, an amount equal to a day's pay for each date listed in paragraph 1 above.

**EMPLOYES' STATEMENT OF FACTS:** The agreements between the parties are available to your Board and by this reference are made a part hereof.

Stevens Yard, Kentucky, is a switch yard located between Cincinnati, Ohio and Maysville, Kentucky, approximately 13 miles East of Cincinnati and 50 miles West of Maysville. Trains between Cincinnati and Maysville operate on two main tracks which go through Stevens Yard. Employes have attached hereto O.R.T. Exhibit "A", which is a sketch depicting the relative positions of the stations and offices involved in the instant case.

Stevens Yard is in the Cincinnati Terminal area and is located on the east side of that area. Another yard (Cheviot), not involved in the instant case, is located on the west side of the area. Westward first class trains travel through the territory shown on ORT Exhibit "A" into the Cincinnati passenger station, and eastward first class trains from the passenger station to Maysville and beyond. Westward freight trains enter Stevens yard where they are switched and the cars sorted into trains, referred to as "transfer cuts" in this territory, to be delivered to connecting lines or moved to Cheviot

in Award 6678 as **not** in contravention of the Telegraphers' Agreement, and there is no justification for any change in that holding.

The claim should be denied in its entirety.

— — — — —  
 All data contained in this submission have been discussed in conference or by correspondence with the employe representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The facts, and the positions of the two parties have been set out fully above and so they will not be repeated here.

The question for the Board to decide is pretty well agreed on by both parties in their briefs. They both state in substance that the primary issue is whether or not the "instructions" or "orders" issued here were "train orders" with the terms of the Agreement between the parties hereto.

Both parties rely on the opinion and the award of the Board in Award No. 6678. The dispute there involved the same parties, the same place and the same rules as here.

Since Award No. 6678 involves facts and issues almost identical with the facts and issues in this case we quote at length form this Opinion:

"The question posed for disposition here is whether a yardmaster may deliver train orders where no telegrapher is employed.

\* \* \* \* \*

"Carriers defense is that the handling of the transfer cuts was strictly a yard operation and that no train orders, as contemplated by Rule 58, were necessary and in support of this position relies on the following definition: . . ." (of a Yard) "We think the Carrier's position is sound (Award 1396) and that arrangements could be made in this yard to handle these transfer cuts without the use of train orders, but that was not done in the instances complained of. The Carrier admits that the usual train order form No. 19 was used, but says it was not a "bona fide" order. This conclusion we cannot accept. We know of no more "bona fide" train order than form No. 19. It is one of the standard forms used almost universally, and its routine of handling is so well known as not to require explanation here, and when on the occasions involved here the copies were delivered by the yardmaster, that was a violation of the Agreement.

From the above it seems clear that if in the opinion of the Board some other form other than Form 19 was used that the Carrier would not have been in violation.

Employe's argued strongly that the case of Form YMM is for all practical purposes the same as using Form 19. They say it is a "train order" and point out the fact that in the form itself the word "order" is used. They argue that the Carrier cannot change the legal effect of the same instrument by simply giving it another name. On the face of it this would appear correct but how can the statements made in the above quoted Opinion be

implemented and carried out by the Carrier in trying to exercise a right which the award says it has other than by simply changing the form of the order to something other than Form No. 19. If it calls the form YMM or by some other name this is immaterial as long, as it avoids the traditional and standardized "train order" known as Form 19.

We disagree with the position of the Carrier that the Award No. 6678 has "placed its stamp of approval" on Form YMM.

We find that the "instructions" or "orders" prepared and issued by the Yardmaster at Coney (Stevens Yard, Ky.) to yard crews, handling westward transfer cuts within the Cincinnati Terminal Yard limits, were not "train orders" within the terms of the Agreement.

There are many other points developed in the briefs but once we have reached the above conclusion it would not seem necessary to discuss them further here.

**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 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 20th day of February 1962.