

Award No. 10432
Docket No. TE-8954

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

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 when on the 24th day of December, 1955, it caused, required or permitted conductor Westcott (a train service employe not covered by Telegraphers' Agreement) Extra 4032 South, to handle (receive, copy and deliver) Train Orders No. 10 and 11, at Rockland.
2. Carrier will be required to compensate senior idle telegrapher (extra in preference) for one day's pay (8 hours) at the minimum telegraphers' rate on the Champlain Division seniority district.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between Delaware and Hudson Railroad Corporation, hereinafter referred to as Carrier, or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was effective July 1, 1944 and has been amended. The Agreement as amended is on file with this Division and is by reference made a part of this submission as though set out herein word for word.

This dispute was handled on the property in the usual manner and through the highest officer designated by carrier to handle such disputes and failed of adjustment. The dispute involves interpretation of the collective bargaining agreement and is, under the Railway Labor Act, as amended, properly submitted to this Board for decision.

On the 24th day of December, 1955, Conductor Westcott, a train service employe not covered by the Telegraphers' Agreement, handled train orders Nos. 10 and 11 at Rockland. The train orders were in words and figures as follows:

is that part which qualifies the restrictions by limiting its application to offices where an operator is employed."

In Award 6055, Referee Begley, claim similar to that in the case at issue was denied and the following is quoted from the Opinion:

"We have read the many awards of this Division covering the identical question and claim, and there is a conflict in the awards. However, in this claim we view the train orders copied by the employees outside of the Telegraphers' Agreement as permissibly incidental rather than an unwarranted invasion of the Telegraphers' field. Award 4259. Single orders were copied on the three days in question and this is insufficient to establish a breach of the Agreement. Therefore, this claim must be denied."

The carrier would also call attention to Award 6487, Referee Rader, where the rules involved and the practices thereunder closely parallel the case at issue. The following is quoted from the Opinion in Award 6487:

"It may well be argued that if such copying of train orders is per se a violation of the Agreement, then the intervening of the long period of time does not condone the practice. However, by such period of time it appears that this has become a standard practice, acquiesced in by employees and that the parties have placed their own interpretation on the same. And such being so, it is not the province of this Division of the Board to interpret the rules for them."

In Award 7153, Referee Larkin, 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."

It is the carrier's position that claim should be dismissed account not presented in accordance with rule covering handling of claims and grievances as contained in the National Agreement of August 21, 1954; if decided on its merits, the claim should be denied account not supported by agreement rules and practices thereunder.

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: Claims of this Organization against this Carrier involving the same material issues have been recently denied by this

Board: Award 7955, Cluster, Referee; Claims 1, 2, 3, and 4 in Award 9204, Stone, Referee; and Award 9262, Hornbeck, Referee.

The above precedents, if not absolutely binding, are the only ones presented in reference to these particular parties and their applicable Agreement, Effective July 1, 1944, as amended, and are, therefore, especially deserving of consideration.

We do not believe that the decisions rendered in the aforementioned Awards are palpably wrong.

Having reached this conclusion, we are not justified in taking action which would in effect reverse the previous Awards on the same property.

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 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 21st day of March 1962.