

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert J. Ables, Referee

PARTIES TO DISPUTE:

**CHICAGO GREAT WESTERN RAILWAY COMPANY
THE ORDER OF RAILROAD TELEGRAPHERS**

STATEMENT OF CLAIM: (30) Carrier's file 0-240. Claim No. A-8 by the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway that:

(a) the Carrier violated the Agreement between the parties, Rule 1 and others, when on September 17, 1955, it required or permitted Conductor Casey of Work Extra Y-46, a person not covered by the Agreement, to copy for his train, Train Order No. 250 at Roseport, a closed station, thus creating a train order office at that point on that day.

(b) the Carrier shall now compensate the senior employe, idle that day on the Minnesota Division, Mail Line — WM&P Districts Seniority District (L. G. Meek) in the amount of eight (8) hours pay at the straight time rate and for whom such compensation is claimed.

EMPLOYES' STATEMENT OF FACTS and POSITION OF EMPLOYES: The above Carrier described cases are not ready for consideration and action by your Board. They are a group of unsettled disputes involving this Carrier and this Organization which have not been handled to conclusion on the property and the right of this Organization to endeavor to settle them by further negotiations or by means other than National Railroad Adjustment Board pursuant to Article V, Section 5, of the Agreement of August 21, 1954, has been challenged by the Carrier in the Courts.

It is, therefore, our position that until the Courts have determined this matter and until these disputes have been handled as provided in Section 3, First (i) of the Railway Labor Act, as amended, they are not properly referable to your Board. Four hundred and eighty copies of this submission are being forwarded under separate cover to accommodate each of your thirty two files.

CARRIER'S STATEMENT OF FACTS: The Carrier and The Order of Railroad Telegraphers are parties to National Agreement signed at Chicago, Illinois, August 21, 1954, between participating Eastern, Western and South-eastern Carriers and Employes represented by the Fifteen Cooperating Railway Labor Organizations signatory thereto. Attached hereto as Exhibit "A"

the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to.

2. With respect to all claims or grievances which arose or arise out of occurrences prior to the effective date of this rule, and which have not been filed by that date, such claims or grievances must be filed in writing within 60 days after the effective date of this rule in the manner provided for in paragraph (a) of Section 1 hereof, and shall be handled in accordance with the requirements of said paragraphs (a), (b) and (c) of Section 1 hereof. With respect to claims or grievances filed prior to the effective date of this rule the claims or grievances must be ruled on or appealed, as the case may be, within 60 days after the effective date of this rule and if not thereafter handled pursuant to paragraph (b) and (c) of Section 1 of this rule the claims or grievances shall be barred or allowed as presented, as the case may be, except that in the case of all claims or grievances on which the highest designated officer of the Carrier has ruled prior to the effective date of this rule, a period of 12 months will be allowed after the effective date of this rule for an appeal to be taken to the appropriate board of adjustment as provided in paragraph (c) of Section 1 thereof before the claim or grievance is barred.

3. A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.

4. This rule recognizes the right of representatives of the Organization, parties hereto, to file and prosecute claims and grievances for an on behalf of the employees they represent.

5. This agreement is not intended to deny the right of the employees to use any other lawful action for the settlement of claims or grievances provided such action is instituted within 9 months of the date of the decision of the highest designated officer of the Carrier.

6. This rule shall not apply to requests for leniency.

OPINION OF BOARD: There are two principal issues in this case. The first is whether the claim is stale for not having been referred to this Board within applicable time limits; and the second is whether the Telegraphers' Agreement has been violated because a conductor, at a station where no telegrapher was employed, telephoned a telegrapher at an adjacent station who relayed to the conductor a Train Order which such telegrapher had received from the dispatcher.

For the reasons contained in Award 10534 the Carrier's contention that the claim is barred by the Time Limit Rule is not sustained. For the reasons contained in this opinion the Carrier's contention that the Telegraphers' Agreement had not been violated is sustained.

There is no dispute about the facts. At Roseport, Minnesota, a station where there were no positions under the Telegraphers' Agreement, the conductor of a Work Extra train handled (received, copied and delivered) a Train Order by telephoning the telegrapher at the adjacent station who relayed to the conductor the Train Order received from the dispatcher. No emergency was involved.

The Employees contend that by this action the Carrier did, in effect, establish a telegraph office at Roseport, which should have been filled by a telegrapher. In their view, the violation occurred when and where the conductor handled the Train Order and it made no difference from whom he received it. The Employees rely principally on the Scope of Work Rule and Addendum No. 3 to the Handling of Train Order Rule. The Carrier maintains that the handling of the Train Order here was consistent with practice of long standing and that Addendum No. 3 permits train and engine service employees to call other than dispatchers to take Train Orders over the telephone.

The provision in issue in Addendum No. 3 is "it is agreed that train and/or engine service employees will not be required to call dispatchers on telephone in connection with train movement or take train orders over the telephone, except in emergency."

The point has been made in many score opinions on the subject that, in the absence of new agreements to meet the fundamental changes brought about by the increased use of the telephone in communications work on the railroads, existing agreements must be construed strictly in this very contentious area because they represent the only sure standards of what the parties have accepted in the way of rights and obligations.

Applying this test in this case the claim must fail because Addendum No. 3, which is the only specific rule on the point involved, limits train and/or engine service employees from calling "dispatchers" on the telephone in connection with train movements or to take train orders. Since the conductor here called a telegrapher, an employee covered by the Agreement the rule in Addendum No. 3 has not been violated.

Addendum No. 3 was agreed to after intensive and detailed negotiation by high echelon officials of both parties. The introductory words to the rule proper are "In settlement of the employees' request for a rule to govern the handling of train orders, messages and/or reports of record by train and engine service employees. . ." This clearly indicates that a settlement was reached after compromise of the respective views of the parties. Therefore, the rule should be construed strictly.

Employees cite a number of awards in support of their contention that under the facts in this case the Carrier did, in effect, establish a telegraph office at Roseport which should have been filled with an employee covered by the Agreement. (The Carrier cites long standing practice and other awards in support of its position). In particular, the Employees rely on Awards Nos. 5901, 2312, 4456 and 3881 to support their view.

It must be openly recognized that the precedents so cited are persuasive in the Employees' favor. But this is to say only what has been said countless times in the interpretation of the Telegraphers' Agreement viz. that there have been so many cases and so many awards on the Agreement that support can be found for almost any view, the rationalization of which is virtually impossible.

In any event, the awards relied on principally by the Employees are distinguishable enough from the present case as to make them not controlling.

In Award No. 5901, the controlling rule was "It is not the disposition of the Railroad to displace operators by having trainmen or other employees operate the telephone for the purpose of blocking trains, handling train orders or messages except in bona fide emergency." It was found that Train Orders copied by members of the train crew by telephone from a telegraph operator at a nearby station constituted displacement under the rule. Since the claim was sustained on the interpretation of a rule different from the one concerned here the cases are distinguishable. As is usually the case in these Telegrapher Agreement decisions, the referee cautioned against broad application of the finding with the final words "Each case must turn on its own facts and merits."

Award No. 2312 involved a communication from a conductor to a dispatcher; the view in Award No. 4456 that "The violation would be as great if the instructions were relayed through a telegraph operator. . .", and the decision in Award No. 3881 were not based on rules comparable to Addendum No. 3, hence these awards are not direct and binding precedent in our case.

Accordingly, under the facts here, it is determined that Addendum No. 3 was not violated by the Carrier when the conductor at a station where no operator was employed telephoned the telegrapher for Train Orders.

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 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 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 April 1962.