

Award No. 10581

Docket No. TE-9702

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Eugene Russell, 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 and the Chesapeake and Ohio Railway that:

1. Carrier violated the agreement between the parties when, on June 7, 1956, it required or permitted Conductor Smith in charge of Work Extra 6038 to receive, copy and deliver train orders Nos. 19, 20, 21, 22 and 23 at Clear Creek Junction, Kentucky.
2. Carrier shall now compensate the senior idle employe, on the district, extra in preference, in an amount equal to a day's pay at the appropriate rate for such work.

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

Clear Creek Junction, Kentucky is located on the Carrier's Long Fork Subdivision 16.1 miles east of Martin, Kentucky. Martin is a central point from which trains branch out into the Coal Fields. At the time cause for this claim arose there was no position under the Telegraphers' Agreement at Clear Creek Junction. The position of operator at that point was abolished effective January 5, 1955.

On June 7, 1956, Conductor Smith in charge of Work Extra 6038 received, copied and delivered train orders Nos. 19, 20, 21, 22 and 23 at Clear Creek Junction.

Claim was filed and handled in the usual manner up to and including the highest designated officer of the Carrier and had been denied.

POSITION OF EMPLOYES: It is the position of the Employees that the handling of train orders by Conductor Smith at Clear Creek Junction on June 7, 1956 was in violation of Rule 1, Scope Rule of the Agreement.

Rule 1 reads:

was proper for Conductor Smith in charge of Extra 6038 to copy train orders No. 19, 20, 21, 22 and 23 at Clear Creek Junction, Kentucky, on June 7, 1956.

Claim should, therefore, be denied.

All data submitted have been discussed in conference or by correspondence with the employe representatives in the handling of this case.

(Exhibits not reproduced).

OPINION OF BOARD: The facts in this case are not in dispute. The Statements of Fact by the parties are identical, and are to the effect that, on June 7, 1956 Carrier required or permitted Conductor Smith in charge of Work Extra 6038 to receive, copy and deliver train orders Nos. 19, 20, 21, 22, and 23 at Clear Creek Junction, Kentucky.

Clear Creek Junction, Ky., is located in the coal fields on Carrier's Long Fork Subdivision 16.1 miles east of Martin, Ky. Martin is the central coal assembly point for this area, from which trains are operated into the coal fields with empties, returning with loads, and has a continuous telegraph office where an operator is employed on each shift.

At the time of the claim now in question there was no telegraph operator employed at Clear Creek Junction and there had been none at this location since March 1955 or about that date.

The Organization alleges that Carrier violated Scope Rule 1 of the Telegraphers' Agreement on June 7, 1956 when Conductor Smith of Work Extra 6038 copied, train orders at Clear Creek Junction; a point where no telegraph operator had been employed since March 1955.

The Carrier contends that such work is not reserved exclusively to telegraphers by the Scope Rule or by any other provision of the Agreement, but that Rule 58 governs.

Basically, the dispute involves the Carrier's right under the current Agreement, to permit or require employes not covered by Telegraphers' working rules to copy orders at points where no operator is regularly assigned.

This Board has consistently held by a long line of awards that the function of this Board is limited to the interpretation and application of Agreements as agreed to between the parties. Award 1589. We are without authority to add to, take from, or write rules for the parties. Awards 871, 1230, 2612, 3407, 4763.

Numerous awards have been rendered and cited by the parties involving the identical question here presented. Many of these awards involve this same Carrier, this same Organization and this same "Coal Fields Agreement" of March 22, 1937 known as Addendum 5, wherein it has been held that such work is not reserved exclusively to Telegraphers by the Scope Rule, or by any other provision of the Agreement and that the only rule covering the handling of train orders is Rule 58, which is limited to "telegraph or telephone offices where an operator is employed." See Awards 5079 - 5080 - 5081 (Coffey).

The most recent award on this subject, between the same parties, in the same coal field area and involving this same question is Award 10379 (Dolnick)

dated February 27, 1962. Since the facts and circumstances resulting in Award 10379 are the same, for all purposes necessary to a determination of the issue now before the Board, we will quote at length from Award 10379.

"There is no disagreement on the facts in this case. There is disagreement only with the interpretation of the Scope Rule, Rule 58 and the applicability of the Coal Fields Agreement of March, 1937.

"The Scope Rules does not define or describe the particular duties of the job titles enumerated therein. It merely recognizes the jobs covered by the Agreement and the representational jurisdiction of the Organization. This is a well determined principle which this Board has pronounced in numerous decisions. It is sufficient to cite only Awards No. 8793 (Dougherty) 8831 (Dougherty) 8838 (McMahon) 10070 (Gray), 9204 (Stone) and 9953 (La Driere). This principle was well stated in Award No. 9956 (La Driere) as follows:

'... the claimant relies on the Scope Rule which is general in nature and specifies positions rather than work to be done, so that claimant's right to recover thereunder must be resolved from a consideration of tradition, historical practice and custom. ...'

"Rule 58 is not a limitation on the general rights enjoyed under the Scope Rule. Tradition, historical practice and custom needs to be considered in applying the rights of the Organization under the Scope Rule. It is reasonable to imply that under some circumstances it is the intent of Rule 58 to hold that 'train orders could be copied by others than telegraphers without penalty' (Award No. 5079 - Coffey). The circumstances in each case must govern the application of this rule. If they are isolated circumstances, Rule 58 applies. If, on the other hand, the Organization's representational rights are threatened and there is no tradition, historical practice or customs to consider, Rule 58 will not apply.

"In the instant case, the Organization has stated that the facts which violate the Telegraphers' Agreement occur frequently and regularly at RC Junction; it is not something which occurs occasionally because of some unforeseen incident but is a part of the regularly programmed operation of these shifter trains, or work extras, which operate daily, occasionally two in one day, out of Shelby to perform the switching service for the mines located on the Road Creek Branch' (R-5). The Carrier's statement that conductors receive and copy train orders 'four and five times a week' (R14) is nowhere denied by the Organization. It is also admitted by the Organization that RC Junction 'is a junction point between the Big Sandy Subdivision and a branch line known as the Road Creek Subdivision commonly called the Road Creek Branch extending to Republic a distance of about 3 miles; on this branch line are located several mines' (R4). Further, the facts show that no telegraph operators have ever been employed at RC Junction even though trains are regularly routed to and from Shelby to RC Junction and the Road Creek Branch. The record also establishes the fact that train orders at RC Junction had been obtained by the train conductor either from a brakeman left at the junction or by telephone from the operator at Marrowbone. All of this fully establishes a tradition, an historical practice and custom which can not be ignored. It follows that unless such tradition, historical practice and

custom is contrary to specific contract provisions they must be given full weight in interpreting the intent of the parties.

"The Coal Fields Agreement dated March 22, 1937, referred to as Addendum 5, lists a number of stations where the Organization requested that telegraph offices be opened. This Agreement continues to provide:

'In considering the opening of telegraph offices on branch lines, it is agreed that so long as there are only a reasonable (an average of two and one-half calls per trick during any two weeks period) number of calls for train orders at a point while no operator is on duty the Railway Company will not be obligated to employ an operator at that point. . . .'

"It is difficult to understand the Organization's argument that Addendum 5 does not apply to RC Junction in view of the fact that it has admitted that RC Junction 'is a junction between the Big Sandy Subdivision commonly known as the Road Creek Subdivision commonly called the Road Creek Branch. . . .' The line from RC Junction to the Republic Mines is definitely a branch line. The fact that the Organization did not request that a telegrapher's position be established at RC Junction does not invalidate the provisions of Addendum 5 quoted above. The two separate paragraphs are not related. The provision defining when an operator on a branch line should be established stands alone. The Carrier has admitted that if the number of telephone calls for train orders at RC Junction 'were to average more than two and one-half calls per trick during any two week period' it would 'under Addendum 5, put on an operator to do the train order work.' There is not evidence in the record that the number of calls exceeded that number."

Based upon a thorough study of this entire record and the applicable awards of the Board, we necessarily find, and hold, that the Carrier, under the facts presented, has not violated the Agreement in this instance.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of May 1962.