

Award No. 10863
Docket No. TE-9537

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Harold Kramer, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad that:

1. Carrier violated the Agreement between the parties hereto when on the 23rd day of July, 1956, it caused, required or permitted Section Foreman Staurowsky (Driver of SRS 302) to handle (receive, copy, and deliver) Train Orders Nos. 45 and 46 at State Line, New York.
2. Carrier shall be required to compensate senior, idle telegraph service employe on the Seneca District, extra in preference, for eight hours at minimum telegrapher (telephoner) rate for such district account the violation above set forth.
3. Carrier shall be required to permit joint check of records for the purpose of ascertaining the name of employe entitled to receive such compensation.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between Lehigh Valley Railroad Company, hereinafter referred to as Carrier or Management and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The agreement was effective on the first day of February, 1948. 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.

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

or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case, the telegrapher will be paid for the call." (Emphasis supplied)

This rule is not difficult to interpret. As a matter of fact, the language is quite simple. It only reserves to the Organization the right to handle train orders at a point where an operator is employed. As pointed out in Carrier's Statement of Facts, there is no operator employed at the point involved in the instant claim. Therefore, it is obvious there was no violation of Rule 32, and that is the only rule in the current agreement relating to train orders for the claim in the instant case.

It is specifically clear in Rule 32 that at points where no operator is employed, handling orders at such points is not exclusively reserved to the Telegraphers. In view of said rule, Carrier asserts that the Organization cannot establish the burden of proof necessary in this claim, and as so often held by this Division that burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks such allowance. See Awards Nos. 4011, 5135, 5329, 5345 and others.

The claim herein should be denied.

The facts presented in this submission were made a matter of discussion with the Committee in conference on the property.

OPINION OF BOARD: The claim presented in this docket concerns an alleged violation of the Scope Rule of the Agreement. The Organization contends that the Agreement was violated when a section foreman, operating a motor car identified as SRS 302, copied train orders at State Line at 3:29 P. M. and again at 4:08 P. M. on July 23, 1956. There are no telegraphers employed at State Line and the orders were relayed to the section foreman, by operator on duty at Sayre.

Submissions by the parties in this docket have been carefully reviewed. The controlling issues have been decided in prior awards involving the same parties.

In Award 8146 the dispute concerned handling of track car permits. In Award 8540, the dispute involved a train order. There the Board said:

"That a Train Order rather than a Track Car permit form was used in the instant case, and that in Award 8146 the work was done by section foremen and signal maintainers, are not material to our decision here because in each case the Petitioner asserts an exclusive right to the work involved, whether it be handling track car permits or train orders, and past practice does not support that position."

The decisions in these awards were subsequently followed in Awards 9999, 10060, and 10061. In accordance with consistent practice, we adhere to precedent established therein. The claim will be denied.

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 19th day of October 1962.