Award No. 10873
Docket No. TE-9673

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Burlington and Quincy Railroad that:

1. Carrier violated the agreement and continues to violate the agreement between the parties when at Lewiston, Illinois commencing February 24, 1956, it requires and permits employes not covered by the agreement to handle train orders.

2. Carrier be required to compensate H. G. Higgins, Agent-Operator at Lewistown, Illinois, or his successor, for a call, (2 hours at the time and one-half rate), on each day such violation occurs commencing February 24, 1956 and continuing thereafter until the violation is corrected.

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

Lewistown, Illinois is a station on the Galesburg Division of the Carrier and at the time cause for this claim arose there was one position of Agent-Operator at that location under the Telegraphers' Agreement with assigned hours 8:00 A. M. to 5:00 P. M., (one hour meal period); work days were Mondays through Fridays, and assigned rest days Saturdays and Sundays. The position was not filled on rest days. Formerly there was a position of operator on the second shift which was abolished some time in 1953.

A Branch Line extends from Lewistown to Fairview, a distance of about 20 miles, on which several mines are located. It is with the operations on this branch line that we are concerned in the instant claim. In order to supply these mines with empty cars for loading, and to move the loaded cars to Lewistown for further handling on the main line, the Carrier operates two shifts of switching service in this territory; one shift beginning about 9:00 A. M. and the other shift about 7:30 P. M.; each shift usually makes two round trips during its tour of duty, sometimes turning back at Fiatt a few miles short of Fairview. While the principal object of this service is to take

The Carrier affirmatively asserts that all data herein and herewith submitted has been previously submitted to the Employes.

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(Exhibits not reproduced.)

OPINION OF BOARD: In the present controversy the Board is concerned with the manner and method of handling train orders at Lewistown, Illinois. The place and manner of the delivery and the individual by whom the delivery was made are important factors in a dispute of this nature.

The original Claim, as presented on the property was, as follows:

"Claim is hereby presented in favor of Mr. Harold Higgins, Agent Operator Lewistown, Illinois, as follows.

1. Carrier violated the Telegraphers' Agreement when on June 21st, June 22nd, July 17th, July 18th, July 19th, July 23rd, July 24th, July 25th, July 26th, July 30th, July 31st, August 1st, August 2nd, and August 3rd 1956, it caused, required or permitted Conductor Houston to handle train orders at Lewistown, Illinois. Agent Operator Higgins was ready and available to perform this work, but was not called.

2. Carrier shall compensate Mr. H. G. Higgins, Agent Operator, Lewistown, Illinois for 14 calls under Rule 5 (e) Call Rule, at the rate of $2.961 per hour for 28 hours. Total $82.91, also a call at the overtime rate for each subsequent date this violation occurs."

In the original presentation it was contended by the Claimant that Harold Higgins, Agent Operator, Lewistown, Illinois, delivered train orders to Conductor Houston, who upon being relieved, delivered or left these orders at the Yard Office for the night crew Conductor and Claimant cited Rule 1(b) and Rule 1 (c) in support of the claim that the Agreement had been violated. (It will be noted that there was no mention of a yardmaster delivering train orders in the original presentation.) This claim was processed in the usual manner without any change up to the highest officer of the Carrier.

It now appears quite definitely that the claim presented here is not the same as the one handled on the property. The claim presented and progressed on the property alleged that the Carrier violated the Agreement when "it caused, required or permitted Conductor Houston to handle train orders at Lewistown, Illinois" and urged that — "the Conductor of the day crew in delivering or leaving work orders for the night crew is performing work that belongs to our craft."

The claim presented to this Board by the Petitioner alleges the Carrier violated the Agreement when "it requires and permits employes not covered by the agreement to handle train orders." While the change in the wording of the claim, of itself, may not appear to be significant, an analysis of Petitioner's submission clearly indicates the basis for the claim as argued by the Petitioner in the submission is a departure from that offered in support of the claim on the property, and does, in effect, present a new claim for our consideration, that was not presented nor handled on the property.

This affirmation may be clearly demonstrated by the following:

1. Where on the property it was contended that the Agreement was violated because a Conductor handled train orders, the Petitioner now argues the Agreement was violated because, allegedly, train orders were delivered by a Yardmaster at the Lewistown Yards (a change in the identity of the person delivering the train orders).

2. Where on the property it was alleged that the Agreement was violated by the Conductor delivering train orders, the Petitioner apparently abandons that position and now avers that the claim does not cover, and that no claim was filed or progressed for, any dates on which the train orders were transferred from the first shift crew to the second shift crew but contends, instead, the following:

> ". . . The situation here confronting us is on the dates when the first shift work train completes its work in advance of the time that the second shift work train begins operations. On these dates the first shift work train crew leaves the train orders and clearance in the custody of the yardmaster and the yardmaster delivers the train orders and clearances to the crew of the second shift work train."

Such a contention was not raised by the Petitioner nor considered on the property.

3. When confronted by the declaration of the Carrier that there was no Yardmaster at Lewistown, the Petitioner then contended — "a yard office employe of whatever title he has did have custody of and handle train orders and that yard office employe is not covered by the Telegraphers Agreement." (Another change)

4. That portion of claim urged in behalf of Higgins' successor was never mentioned, presented nor progressed on the property in the usual manner.

From the foregoing, we can come to but one conclusion and that is, the Petitioner has departed from the claim which was presented and progressed on the property to such an extent that it is not the same claim that was progressed on the property but in fact the Petitioner has presented a new claim that was never handled on the property.

The presentation by the Petitioner to this Board was improper and leaves the Board with no other alternative than to enter a dismissal Award.

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; and

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1962.