Award No. 10911
Docket No. TE-9407

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, 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 when on April 11, 12, 13, 17, 18, 19, 20, 23 and 24, 1956, it caused, required or permitted track car drivers, employes not covered by the Telegraphers' Agreement, to handle (receive, copy and repeat) track car permits (Form T.C.) at Van Etten Junction, New York, as follows:

Date 1956	Driver of Track Car	Track Car No.	At	Destination	Time Permit Issued By Train Dispatcher
4/11	Zammet	7365	Van Etten Jct.	Odessa	3:00 P. M.
4/12	Rorick	7335	Van Etten Jct.	M. P. 283	10:25 A. M.
4/12	Zammet	7365	Van Etten Jct.	M. P. 283	10:25 A. M.
4/13	Rorick	7335	Van Etten Jct.	M. P. 289	8:35 A. M.
4/17	Rorick	7335	Van Etten Jct.	M. P. 297	9:06 A. M.
4/18	Ventrino	7406	Van Etten Jct.	Sayre	12:20 P. M.
4/19	Miller	7353	Van Etten Jct.	Sayre	3:40 P. M.
4/20	Rorick	7335	Van Etten Jct.	M. P. 289	8:07 A. M.
4/23	Rorick	7335	Van Etten Jct.	M. P. 305	8:03 A. M.
4/24	Rorick	7335	Van Etten Jct.	Odessa	8:32 A. M.

2. Carrier violated the Agreement when on April 18 and 19, 1956, it caused, required or permitted Conductors John Zolnierowicz and W. Broome, train service employes not covered by Telegraphers' Agreement, to handle, (receive, copy and deliver) Train Orders Nos. 7 and 35 at Tifft Junction.

3. Carrier violated the Agreement when on May 23, 1956, it caused, required or permitted Section Foreman Trunzo, driver of track car 7336, an employe not covered by Telegraphers' Agreement,

to handle (receive, copy and deliver) Train Order No. 40 at Willow Creek, New York.

4. Carrier will be required to compensate senior idle employe (extra in preference) Seneca Seniority District, (for violations set forth in Paragraphs 1 and 3) and Buffalo Seniority District (for violations set forth in Paragraph 2), for one day (8 hours) at the minimum telegrapher (telephoner) rates on such seniority districts, for each and every such violation.

5. Further, Carrier will be required to permit joint check of records for the purpose of determining the names of employes entitled to receive such compensation and for the further purpose of determining any subsequent violations of the same nature at the points set forth in Paragraphs 1, 2 and 3.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between the Lehigh Valley Railroad, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers, governing rates of pay, rules and working conditions for employes covered thereby. The Agreement was effective February 1, 1948 and is by reference made a part hereof as though copied herein word for word.

The disputes submitted herein involve interpretation of the aforesaid agreement; were handled on the property in the usual manner to and including the highest officer designated by Management to handle such disputes. Management has declined the claims of Employes and the disputes remain unadjusted. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the parties and the subject matter.

This submission involves three separately handled disputes, but for convenience and similarity of issues, they are submitted in the single submission. In the Statement of Facts we shall refer to the substantive violation set forth in Paragraph 1 of the Statement of Claim, arising at Van Etten Junction, as Case No. 1; the violation set forth in Paragraph 2 of the Statement of Claim, arising at Tifft Junction, as Case No. 2, and the claim set forth in Paragraph 3 of the Statement of Claim, arising at Willow Creek, as Case No. 3.

The violations as set forth by the Employes at each point involve the handling of written communications of record by an employe not covered by the Telegraphers' Agreement. The details or facts out of which the claims arose are as follows:

CASE NO. 1 (Van Etten Junction)

Carrier formerly maintained at Van Etten Junction round-the-clock telegraph service, but the positions were abolished several years ago. When the positions were abolished the interlocked switches at Van Etten Junction were handled by remote control from Sayre, Pennsylvania, 13.2 miles distant.

When the operators were stationed at Van Etten Junction, among other duties, they were required to handle track car permits. A track car permit is in the following form:

In conclusion, Carrier submits that there is no violation of the current agreement on this property when a track car operator or conductor copies an occasional train order or track car permit **at a point where an operator is not employed.** The Telegraphers have recognized this and have acquiesced thereto for a long number of years. Their unsuccessful attempt to negotiate a rule prohibiting the practice is a complete admission that the rules now in existence and effect do not prohibit — hence, this Division having no authority to sustain claims by writing new rules for the parties, all claims 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: This claim involves three disputes. At Van Etten Jct. a track car permit was handled by a track car driver; at Tifft Jct. train orders were handled by train service Employes, and at Willow Creek a track car permit by Train Order was handled by a Section Foreman. None of these Employes are under the Telegraphers Agreement; and no telegrapher is employed at any of these points. The issue presented by this submission is whether the Carrier violated the Agreement when Employes not covered by the Telegraphers Agreement handled messages of record at points where no telegrapher was employed. This issue, in several different aspects but dealing with the same rules on this property, has been before this Division a number of times. Awards 8146, 8540, 9999, 10060, 10061 and 10863.

When the Division has previously considered and disposed of a dispute involving the same parties, the same rule and similar facts presenting the same issue as is now before the Division the prior decisions should control. Any other standard would lead to chaos.

The issue involved in this claim has heretofore been determined adverse to the contention of the Claimants (See awards listed above). In the absence of any showing that such awards are patently erroneous (and no such showing was made) we must follow them and find that there has been no violation of the Agreement as alleged. The claims will therefore 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 20th day of November 1962.