

Award No. 10916

Docket No. TE-9494

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE 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 August 23, 1956, it caused, required or permitted Section Foreman Mazzoli, an employe not covered by the Telegraphers' Agreement to handle (receive, copy and deliver) train order No. 41 at Owasco Lake, N. Y. Train order No. 41 was transmitted by telephone by train dispatcher from Buffalo, N. Y., direct to Section Foreman Mazzoli at Owasco Lake on August 23, 1956.

2. Carrier will be required to compensate the senior idle telegraph service employe on Auburn Seniority District, extra in preference, for eight hours at minimum telegrapher (telephoner) rate for such district for the violation as above set forth.

3. Carrier will be required to permit joint check of records for the purpose of ascertaining name of the employe entitled to receive such compensation.

EMPLOYEES' 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 Employees 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 dispute submitted herein involves interpretation of the collective bargaining agreement, and was 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 claim and the dispute remains unadjusted. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the parties and the subject matter.

The dispute involves the handling of a train order at Owasco Lake. On the 23rd day of August, 1956, at 3:09 P. M. a train dispatcher of Carrier,

of such classes of work; the seniority rules merely control the disposition of the work that is available under the agreement." (Emphasis ours.)

In the present claim and the many other claims of similar character in dispute between the parties here and which are at present before your Board awaiting decision, the Organization has been peculiarly quiet on Rule 32 of the agreement, the caption of which is—"HANDLING TRAIN ORDERS." For ready reference, the rule reads as follows:

"No employe other than covered by this agreement and train dispatchers will be permitted to handle train orders at telegraph 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 ours.)

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 that 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 facts of record raised the same issue as was before the Division in Award 10915. For the reasons therein expressed we find the claim presented here to be without merit, and it is therefore 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.