

**Award No. 11566**  
**Docket No. TE-9749**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Arthur W. Sempliner, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE DELAWARE AND HUDSON RAILROAD CORPORATION**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware and Hudson Railroad, that:

**CASE NO. 1 (Carrier No. 18.56)**

1. Carrier violated Agreement between the parties hereto when on the 1st day of September, 1956, it caused, required or permitted Conductor S. Waters to handle (receive, copy and deliver), 19 Order No. 7 at Greenwich, New York, Agent-Telegrapher W. H. Brewer being available but was not called.

2. Carrier shall compensate W. H. Brewer, Agent-Telegrapher at Greenwich, New York, for one call (2 hours at \$2.98 per hour) as provided in the Agreement.

**CASE NO. 2 (Carrier No. 27.56)**

1. Carrier violated Agreement between the parties hereto when on November 22, 1956 it caused, required or permitted Conductor H. Randeau, Train SC-8, to handle (receive, copy and deliver) Train Order No. 14 at Castleton, Vermont, Agent-Telegrapher C. C. Corey being available and ready to perform this work but was not called.

2. Carrier shall compensate C. C. Corey, Agent-Telegrapher, Castleton, Vermont, for one call (2 hours at \$3.11 per hour), as provided in the Agreement.

**EMPLOYES' STATEMENT OF FACTS:** There is in full force and effect a collective bargaining agreement entered into by and between The Delaware and Hudson Railroad Corporation, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employees. The Agreement was effective July 1, 1944 and has been amended. The Agreement as amended is on file with this Division and is, by reference, included in this submission as though copied herein word for word.

**OPINION OF BOARD:** Two claims are involved. There is little dispute as to facts, though some dispute as to interpretation of the facts.

Case No. 1 involves a claim alleging a violation of the Agreement, when the Carrier allowed a conductor to handle a train order at Greenwich Junction, New York, when an agent-telegrapher, was available at Salem to handle the order. Case No. 2 involves a claim when the Carrier allowed a conductor to handle a train order at Castleton, Vermont, when an agent conductor was available to handle the order. In both cases the instance of alleged violation took place when the agent-telegraphers were off duty. In case No. 2, the agent-telegrapher's duty station was at the point of alleged violation, Castleton, Vermont. In case No. 1, the agent-telegrapher's duty station was at Salem, New York. However, in the usual course of operation, a train order for Greenwich Junction, New York would have been handled at Salem, New York had the agent-telegrapher been on duty at that time. It thus appears that there is no material difference in the facts of the two claims. In both instances the Carrier knew in advance that it would be necessary to obtain train orders. In case No. 1 the conductor was instructed to telephone for train order when required. His instructions were as follows:

"When you are ready to leave for Whitehall, call dispatcher on long distance for orders. Call either from Greenwich or from gas station at Greenwich Junction."

Article 23 of the Collective Bargaining Agreement reads:

"(a) The handling of train orders at telegraph or telephone offices is restricted to employes under the scope of this agreement and Train Dispatchers, except in emergency. In emergency, if an employe under the scope of this agreement is available or can be promptly located he must be called to handle train orders and if not so called will be paid as provided by the call rule.

"(b) Emergencies as herein specified shall include casualties or accidents, engine failures, wrecks, obstruction of tracks, washouts, tornadoes, storms, slides or unusual delays due to hotbox or break-in-two that could not have been anticipated by the Train Dispatcher when train was at last previous telegraph office, which would result in serious delay to traffic."

It can thus be seen that the emergency contemplated did not exist here. It was not of the same type. The Carrier knew well in advance that in normal operations it would be necessary to make use of a train order. Numerous awards of this Division have sustained like claims, and the instant claims should therefore be sustained.

**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 violated and the claims are sustained in accordance with the Opinion.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1963.