

Award No. 11709

Docket No. TE-10702

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

BANGOR AND AROOSTOOK RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Bangor and Aroostook Railroad that:

1. The Carrier violated and continues to violate the parties' Agreement at Houlton, Maine, when, commencing November 25, 1957, between the hours of 11:30 A.M. and 12:30 P.M. (Claimant's meal period) it requires or permits train dispatchers at Houlton, Maine, to handle (copy and deliver) train orders at this station where an employe covered by the Telegraphers' Agreement is employed, and available, but fails and refuses to pay such employe in accordance with the provisions of Article XXXIV, paragraph (b).

2. The Carrier shall, because of the violations set forth above, compensate M. P. Gillis, regularly assigned operator, Houlton, Maine, and/or his successor a call in accordance with the call and overtime provisions of Article XVIII as stipulated by Article XXXIV, paragraph (b) for each violation commencing November 25, 1957, and each date thereafter so long as the violation continue. The dates of violation to be ascertained by a joint check of Carrier's record.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective May 1, 1946, as revised.

At Page 55 of the effective Agreement are listed the positions at Houlton, Maine, in existence on the effective date of said Agreement. They are:

	Position	Rate per Hour
Houlton	Opr. 1st	\$1.675
Houlton	Opr. 2nd	1.639

On Saturday, November 23, 1957, the second shift operator's position at Houlton was abolished. On Monday, November 25, 1957, the assigned hours of the first shift operator's position were changed to 8:30 A.M. to 5:30 P.M. with an assigned meal period (Article XIII) 11:30 A.M. to 13:30 P.M.

From the above statement, it can be seen that the Carrier has operated for over fifty years, either handling train orders at Houlton direct to train crews by the train dispatchers or by an operator in the station, and in this time the Working Agreement and the Rules and Regulations of the Operating Department also had been revised. A circular was issued following the revision of the rule book in 1946 and at no time has the organization protested train dispatchers handling train orders direct to train crews until 1957, when claims were entered due to operators' positions at Northern Maine Junction being abolished, followed by claims for noon hours following the abolishment of the second-trick operator's position at Houlton in 1957. It is to be noted that the organization has not made claim or protested the handling of train orders by train dispatchers at Houlton except for the noon hour, Monday through Saturday. Train dispatchers have handled train orders direct to train crews at Houlton during all the hours that the station was closed and also from 1929 to 1945 no train orders were handled by the operator in the ticket office.

Carrier feels that its position in declining claims is upheld by Award No. 8333 and past practice of over fifty years. The organization's claim at this late date to place a different interpretation of Paragraph (a), Article XXXIV, is a belated attempt at a "make-work" scheme, and Carrier respectfully requests that claims be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue here is similar to the one in Award No. 11708 where we discussed Article XXXIV (a) and (b) at some length. We held there, and so hold here, that Article XXXIV (a) is clear and unambiguous and that train dispatchers are specifically given the right to handle train orders.

The facts in this case are even stronger in that the evidence, although unnecessary, shows that train dispatchers issued and delivered train orders at Houlton since 1941. This is a period of about sixteen years prior to the time the claim arose.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of September 1963.