Award No. 11788

Docket No. TE-10385

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MINNEAPOLIS, ST. PAUL AND SAULT STE. MARIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Minneapolis, St. Paul & Sault Ste. Marie Railroad, that:

1. Carrier violated the Agreement between the parties when at Rhinelander, Wisconsin, on January 18, 19, 22, 24, and February 14, 1957, it required or permitted employes not covered by the Agreement to handle train orders.

2. Carrier shall compensate in the amount of a minimum call L. R. Savoie on January 18, D. G. Deaton on January 19, and P. J. Kobilka on January 22, 24 and February 14, 1957.

EMPLOYES' STATEMENT OF FACTS: Rhinelander, Wisconsin is a station on this Carrier's lines. At the time cause for this claim arose there were two positions under the agreement. The first position of Operator with assigned hours 9:00 A. M. to 5:00 P. M. (one hour meal period) and the second position of Operator with assigned hours of 11:30 P. M. to 7:30 A. M. both having assigned rest days of Saturdays and Sundays each week. Claimant Kobilka was regularly assigned to the first position, Savoie to the second position and Deaton was performing rest day relief on January 19 (Saturday).

On the dates enumerated in the above Statement of Claim the first trick operator was instructed to clear a train before going off duty and leave the clearance and train orders on the train register to be picked up by the train crew. On January 18 Train No. 16 was reported to arrive about 5:15 P. M.; January 19 Train No. 16 about 6:30 P. M.; January 22 Train No. 16 about 6:00 P. M.; January 24 Train No. 16 about 6:00 P. M.; February 14 Train Extra 206-A East about 6:00 P. M. There is no dispute between the parties that the operators were so instructed and did clear the train with the train dispatcher before going off duty, and left the clearance and train orders on the train register; the clearance and train orders were picked up from the train register by some member of the train crew.

Prior to 1954 the Carrier maintained continuous service at this station with operators on duty around the clock, changing shifts at 7:30 A. M., 3:30 P. M. and 11:30 P. M. One shift was abolished and the starting time of the

also be noticed that on the dates in question Train No. 16 went to work within 15 minutes to 1 hour and 30 minutes following the end of the first trick operator's tour of duty. If these claims are sustained, at most the penalty should be no more than it would have been had the operator been required to remain on duty to deliver the orders—that is, overtime on the minute basis computed from 5:00 P. M.

In this connection, Carrier feels that Second Trick Operator Savoie's claim for a call on Friday, January 18, 1957, is entirely unwarranted. Here, an operator who was not due to commence work until some 6 hours later is claiming a call for work which, if it had been required, would have been taken care of by holding the first trick operator on duty 15 minutes overtime.

In summary, Carrier maintains that the telegraphers performed all duties which are exclusively reserved for them under the rules. No one other than the claimants and the persons to whom the orders were addressed participated in the handling thereof. The Board should reappraise the issues at this time rather than unquestioningly accepting the progressively expanded meanings attributed to the standard train order rule by the authors of sustained awards. As the rule is presently construed by the employes, it is not a matter of preservation of work but, rather, a "make work" rule. In this present era the railroad industry is hard put to maintain its competitive position and desperately needs relief from strained rules interpretations which result in unwarranted payments for unnecessary work.

OPINION OF BOARD: This case poses a question of interpretation of the so-called "standard train order rule". In the Agreement before us is Rule 20. It reads:

> "No employee other than covered by this schedule 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.)**

THE FACTS

The facts are not disputed.

On each of the dates specified in the Claim a telegrapher, during his regularly assigned hours, was instructed to clear a train with the dispatcher before going off duty and to leave the clearance and train orders on the train register. Subsequently, in the absence of a telegrapher on duty at the office, the clearance and train orders were picked up from the train register by a member of the train crew.

CONTENTIONS OF PARTIES

Petitioner contends that Rule 20, contractually obligates Carrier to have a telegrapher on duty at the time train orders are picked up by a train crew; and, failing in this a telegrapher must be paid for a call.

Carrier contends that the words "to handle" must be literally construed; and, therefore, since there had been no intermediate handling of the orders between the time that the telegrapher placed them on the train register and their pick up by a member of the train crew, Rule 20 was not violated.

PRECEDENTS

This Division, since 1940, has issued eighteen Awards in cases involving the "standard train order rule" with like facts and the same issue now before

us. In fifteen cases the Employes' position was sustained; the Carriers' in three. The following table lists the cases chronologically and their disposition:

AWARD NO.	DATE OF AWARD	REFEREE	SUSTAINED	DENIED
1166	7/30/40	Hilliard	*	
1169	7/30/40	Hilliard	*	
1170	7/30/40	Hilliard	*	
1422	5/12/41	Bushnell	*	
1680	1/16/42	Garrison	*	
1821	5/21/42	Yeager		*
1879	7/14/42	Bakke	*	
2928	6/20/45	Carter	*	
3611	7/17/47	Rudolph	*	
3612	7/17/47	Rudolph	*	
4057	8/11/48	Fox	*	
5013	8/10/50	Parker	*	
8327	4/30/58	McCoy		*
8657	1/12/59	Guthrie	*	
9319	3/29/60	Johnson	*	
10239	12/12/61	Gray	*	
11473	6/ 6/63	Moore		*
11653	7/26/63	Hall	*	

RESOLUTION

The issue in this case has been exhaustively and ably briefed. This along with the Opinions in and Dissents and Answers to Dissents to the precedent Awards, **supra,** have served to fully inform us of all facets of argument, pro and con. The parties have demonstrated exemplary candidness which makes obvious that Carriers on one side, Employes on the other, continue adamant in their respective positions. The conflicts in our Awards, relatively few as they are, have not helped.

Both sides have the legal right to repeatedly bring the issue before us and seek to prevail through the decisional process. We respect the right. We regret the consequences when it gives rise to conflicting Awards.

We have no hesitation or compunctions in reversing prior Awards when we are convinced they are palpably wrong. But, we cannot and do not lightly regard precedent Awards; for, if we did so, it would not engender the prompt and orderly settlement of disputes on the property within the contemplation of Section 2(4) and (5) of The Railway Labor Act, herein called the Act. The possibility that if the issue was before us in a case of first impression, we might have decided it differently, is not enough to justify reversal of precedent Awards. Only if in law and in fact a prior Award finds no support should we reverse it. Certainly, where a provision of an Agreement permits more than one interpretation, we must presume that the Division, in its deliberations, considered all of them before making its selective determination. We should not at a later date, with a different referee participating, substitute our judgment for that in a precedent Award unless we are unequivocally convinced

and can find that the prior judgment is without support. To apply any other test would be to foster uncertainty in the Employe-Carrier relationships in derogation of the objectives of the Act.

Reasonable men, of ability and integrity, may and do differ in their interpretations of the "standard train order rule". But, when we are confronted with fifteen sustaining precedent Awards and only three denials, over a period of twenty-three years, we are convinced that the weight of authority, by consensus of opinion, favors the judgments in the sustaining Awards. And, we take note that the Division has, in effect, immediately reversed each of the denial Awards in the very next like case which came before it. See the chronological list of precedent Awards, **supra,** and the disposition of each.

For the foregoing reasons we will sustain the Claim.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October 1963.

DISSENT TO AWARD 11788, DOCKET TE-10385

Award 11788 perpetuates basic error and attempts to justify itself on a box-score basis. The basic error is patent from a mere reading of the claim, viz:

> "Carrier violated the Agreement . . . when . . . it required or permitted employes not covered by the agreement to handle train orders."

The award here sustains the claim though admittedly the Carrier did not permit employes not covered by the contract to handle the train orders involved. These train orders were left on a train register by a telegrapher and were not "handled" or even touched by anyone until picked up by the crew to whom they were addressed. Certainly inherent in such a claim as here involved

is the obligation of the Petitioner to prove handling by non-contract employes, yet this award ignores this and goes on to sustain the claim merely because referees on 15 other occasions have committed similar error. Error compounded, no matter how many times, does not become right.

The award is erroneous and we dissent.

/s/ D. S. Dugan
/s/ P. C. Carter
/s/ W. H. Castle
/s/ T. F. Strunck
/s/ G. C. White