Award No. 11822
Docket No. TE-10735

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GREEN BAY AND WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Green Bay and Western Railroad, that:

(1) The Carrier violated and continues to violate the parties' Agreement at Plover, Wisconsin, when it requires or permits train service personnel not covered by the Agreement, to handle train orders outside the assigned hours of the Agent-Operator.

(2) The Carrier shall, because of the violations set forth above, commencing June 19, 28, August 2, 7, 9, 14, 21 and 28, 1957, and thereafter so long as the violations continue, pay Harold Keen, Agent-Operator at Plover, a call as provided by Rule 12 of the Agreement. A joint check of the Carrier's records to be made to ascertain dates, subsequent to those shown, on which violations have occurred.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective November 1, 1955, as amended.

Plover, Wisconsin is a one-man agency station located on Carrier's main line between Green Bay and Wisconsin Rapids.

The Agent-Operator at Plover has assigned hours of 8:00 A. M. to 5:00 P. M., one hour meal period. Assigned work week is Monday through Friday, rest days Saturday and Sunday.

From Plover extends a branch line some six miles into the hinterland to Stevens Point, the only station on the branch line.

Train No. 8 is a third class way freight scheduled to run between Wisconsin Rapids and Green Bay on Monday, Wednesday and Friday, and re-

say that the Conductor was performing work which was exclusively that of a telegrapher when he merely picked up the train order from the waybill box. In order to sustain their position, the burden of proof is upon Employes to show that someone other than a telegrapher performed work which was exclusively that of a telegrapher. This they cannot do and therefore no basis for claim exists because "no employes other than those covered by this agreement" handled the train order.

We have not quoted any operating rules regarding the handling of train orders because it would serve no useful purpose to do so. It is well settled that inasmuch as operating rules are promulgated by the Carrier, unilaterally, they can be altered unilaterally by the Carrier when it is reasonable and proper to do so, as was done in this case when the Dispatcher instructed the operator to leave the train order in the waybill box. The rights of the Employes are to be found in the Agreement alone, and the Train Order Rule in the Agreement is clear and unambiguous.

It is a fundamental principle that whether to have work done or not is a managerial prerogative and Carrier is under no obligation to have work performed which it does not consider necessary. In this case, the Carrier decided that placing the train order in the waybill box would satisfy the requirements of service and that it was not necessary for the operator to personally hand the order to the Conductor. This was a decision for the carrier to make, clearly within the Carrier's area of discretion, and was perfectly proper. The Carrier has the undisputed right to decide whether or not it wants certain work performed and Carrier's right to have certain work eliminated cannot be challenged so long as during the process of having certain work eliminated, work exclusively reserved for one craft is not performed by someone outside that craft. There would be considerable merit to Employe's contention if someone other than a telegrapher had performed even the slightest service in connection with the handling of the train order, but the fact remains, that no human hand intervened between handling of the train order by the telegrapher and constructive delivery to the Conductor to whom addressed.

Our situation is so identical to that involved in a recent Award of the Third Division, namely Award No. 8327, that the Carrier bases its argument squarely upon the reasoning behind this Award. The only material difference in facts is that in Award 8327 the train order was left pinned to the train register book whereas in our situation the train orders were left in the waybill box. The facts and circumstances in this claim, with the above exception, are completely identical to those in Award No. 8327, and this claim should similarly be denied in order to preserve a practice and interpretation of long standing.

OPINION OF BOARD: The question is whether Rule 12 of the Agreement between these parties has been violated when Carrier requires a telegrapher to place a train order, which that telegrapher has copied, in a waybill box for the designated conductor to pick up while the telegrapher is not on duty.

In furtherance of maintaining consistency in the awards of this Division, and so as to avoid conflict and confusion in them, we deem a sustaining award proper. Award 11653 (Hall). Carrier has paid the claim for June 19, 28, and August 2, 7, 9, 14, 21 and 28, 1957, and should be credited accordingly.

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 the Agreement was violated.

AWARD

Claim sustained in accordance with Opinion.

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.

CARRIER MEMBERS' DISSENT TO AWARD 11822
DOCKET TE-10735

We have two lines of authority on the point in issue. The longer line which the majority here follow in "furtherance of maintaining consistency in the awards" runs back to a patently erroneous concept which was adopted when there was confustion as to the powers of this Board, a concept which is entirely inconsistent with the Board's legal obligation to merely interpret existing Agreements, applying the ordinary rules of contract law. The shorter line of authority is made up of decisions by Referees who were willing to abandon erroneous precedent in favor of admittedly correct principles. See **Awards 8327** (McCoy), **11473** (Moore).

In a case such as this where the practice on the property has admittedly been in conformity with the shorter but correct line of authority, our decision should uphold the practice, the interpretation which the parties themselves have adopted over the years. Our failure to do so constitutes palpable error.

We dissent.

/s/ G. L. Naylor

/s/ W. M. Roberts

/s/ R. E. Black

/s/ W. F. Euker

/s/ R. A. De Rossett