

Award No. 12015
Docket No. TE-10541

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE AND HUDSON RAILROAD CORP.

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

1. Carrier violated the rules of the Telegraphers' Agreement when on May 10, 1957, it caused, required or permitted Conductor Rounds, Extra 4063 South to handle (receive, copy and deliver) 19 Train Order No. 12 at Cummings.

2. Carrier shall now compensate George D. Francis, the senior, available employe, eight hours at the rate of his regular assignment, pro rata rate of \$2.092 per hour in the amount of \$25.10 account rest day.

EMPLOYEES' 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 Employes or Telegraphers. The Agreement was effective April 1, 1957, and is, by reference, incorporated into this submission as though set out herein word for word.

The dispute submitted herein was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the parties and the subject matter.

The dispute is primarily based on the provisions of Article 23 (A) of the Agreement, reading:

"No employe other than covered by this Agreement and train dispatchers will be permitted to handle train orders, except in cases of emergency."

As will be shown in paragraphs 1 to 16, inclusive, there is no dispute between the parties as to the facts giving rise to the claim. It is conceded

In addition, it is desired to call particular attention to the train order rule proposed by the employees on February 3, 1955, particularly paragraph (c). It will be noted that this proposed rule, if it had been accepted, would apply to handling train orders at points where telegraphers were not employed. No such rule was agreed to. The train order rule which was agreed to was already interpreted in Award 6863 as not applying where telegraphers were not employed, and such interpretation was clearly understood by the negotiators of the present train order rule.

Insofar as handling train orders where telegraphers are not employed, it has always been the practice for other than telegraphers to handle such train orders, without claim or protest from telegraphers until late in 1954. Attached are several statements, marked Exhibits A to J, attesting to this practice of handling train orders. Several claims of telegraphers presented since 1954 are now pending before the Third Division under the previous agreement. Two such claims have been decided by the Third Division in Awards 8037 and 8038, and the contentions of the employees rejected.

Regardless of previous disputes as to the exclusive right of telegraphers to handle train orders at points where telegraphers were not employed, the train order rule effective April 1, 1957, was agreed to with both parties having full knowledge of the interpretation placed upon this exact rule by this Division of the Board in Award 6863 and such interpretation of this rule was accepted by both parties.

Without agreeing that there is any basis for sustaining the claim in this case, the carrier calls the Board's attention to the fact that claim is made for a day's pay at time and one-half rate. The Board has decided in many cases that the proper rate for service not performed is pro rata rate. In addition, if for any reason the Board finds that the claim should be sustained, it should be for no more than a call under Article No. 14 A.

Claim is not supported by agreement rules and carrier respectfully requests that it be denied.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue is: Does the use of the telephone by employees not covered by the Telegraphers' Agreement, in copying train orders at blind sidings (a point where no Operator is employed) violate the Train Order Rule of the effective Agreement?

Article 23 (the Train Order Rule) provides in its entirety:

"ARTICLE No. 23
"Handling Train Orders

"A. No employe other than covered by this Agreement and train dispatchers will be permitted to handle train orders, except in cases of emergency.

"B. If train orders are handled at stations or locations where an employe covered by this agreement is employed but not on duty, the employe, if available or can be promptly located, will be called to perform such duties and paid under the provisions of Article No. 14;

if available and not called, the employe will be compensated as if he had been called.

"C. Emergencies as specified in the preceding paragraphs of this Article shall include only casualties or accidents, storms, engine failures, wrecks, obstructions to tracks, washouts, tornadoes, slides, or unusual delays due to hot boxes or break-in-two, that could not have been anticipated by the dispatcher when the train was at the last previous open telegraph office, and which would result in serious delay to traffic."

Paragraph C of Article 23 is not pertinent to the disposition of this claim and is not further considered herein.

If Paragraph A of Article 23 stood alone, its all-inclusive scope would require a sustaining award herein; but Paragraph A does not stand alone and we consider that its provisions are qualified by Paragraph B of Article 23. Since Paragraph B specifically provides for a call (or compensation in lieu thereof):

"If train orders are handled at stations or locations where an employe covered by this agreement is employed but not on duty, . . ."
(Emphasis ours.)

and makes no provision for either a call or any compensation in lieu thereof if train orders are handled at stations or locations where no employe covered by the agreement is employed, we conclude that the parties did not intend to require a call or any compensation in lieu thereof in the latter situation. Had the parties so intended, they could and should have said so. Although Award No. 6863 is not controlling, we deem the rationale thereof valid and consistent with sound principles and with this Opinion.

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 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 19th day of December 1963.