

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

William N. Christian, Referee

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**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 Telegraphers' Agreement when on November 29, 1958 it caused, required or permitted Conductor Herron to receive, copy and deliver Train Order No. 219 at South Junction, New York.
2. Carrier will now compensate Telegrapher O. C. Ladue, the senior available telegrapher, one day's pay, eight hours, at time and one-half rate, account rest day and not called to handle such work covered by the current 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 the 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, made a part of 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. This Division, under the provisions of the Railway Labor Act, as amended, has jurisdiction of the parties and the subject matter.

This dispute arose on November 29, 1958 when Conductor Herron handled train order at South Junction. Article 23 (A) of the Agreement provides:

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

where no member of the craft is employed they may be handled by other employes."

Award 6863 was discussed by the negotiators prior to arriving at agreement on Article No. 23 of the April 1, 1957 Agreement and it was clearly understood that the interpretation placed on the B&M train order rule in Award 6863, insofar as handling train orders where telegraphers were not employed, would be the accepted application of the same rule in the D&H Agreement effective April 1, 1957.

In addition, it is desired to call particular attention to the train order rule proposed by the employes 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 employes 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 as provided 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 issues herein are the same as in Docket No. 10541, Award No. 12015, and we adopt the opinion therein as determinative of the issues in the confronting 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 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.