

Award No. 12240
Docket No. TE-10601

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad that:

1. Carrier violated the terms of the Telegraphers' Agreement when, on the 20th day of June, 1957, it failed and refused to permit Operator G. L. Hawkins to personally deliver train order No. 315 to train No. 86 at Birmingham Yard, Alabama, but instead required Hawkins to leave the train order on the train register at the end of his tour of duty (4:00 P.M.), which order was later picked up by a member of train No. 86's crew.

2. Carrier shall compensate the claimant, G. L. Hawkins, for a "call", two (2) hours at the overtime rate of the first-shift telegrapher's position at Birmingham Yard, for the aforesaid violation, total amount \$6.44.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement entered into by and between Seaboard Air Line Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement was effective October 1, 1944, and is by reference made a part of this dispute 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. The dispute is under the provisions of the Railway Labor Act, as amended, and is submitted to this Division for award.

1. On June 20, 1957, there were two shifts regularly assigned to Birmingham Yard, with assigned hours as follows:

First Shift	8:00 A.M. to 4:00 P.M.
Second Shift	9:00 P.M. to 5:00 A.M.

2. Claimant G. L. Hawkins was on date involved herein regularly assigned to position of first shift Operator, Birmingham Yard, Alabama.

and thus confirm sound and long-established general principles. No one is entitled to perform work that the carrier does not want performed by anyone. Neither the Scope Rule nor the Train Order Rule is violated except when some employe other than a telegrapher performs telegrapher's work. For these reasons the claim will be denied."

For the above well stated reasons, the instant claim is wholly without agreement support and the Carrier respectfully requests that a denial decision be made thereon.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts are not in dispute. Claimant was required to leave certain train orders and a clearance card on the office train registry book when he went off duty. They were later picked up by the conductor of the train.

Petitioner asserts Claimant should have been permitted personally to deliver the orders and clearance cards to the Conductor, even though this would have required his remaining on duty after the end of his shift and the payment of overtime, citing Rule 24 of the Agreement, which reads, in pertinent part, as follows:

"No employe 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 emergency, in which case the operator will be paid for the call."

Respondent's defense, in brief, is that there was no rule violation as alleged because no one other than a telegrapher handled the train orders nor does the rule require personal delivery of train orders by a telegrapher to addressees.

Rule 24 of the Agreement in evidence is the standard train order rule which has been the subject of considerable controversy as to its meaning and application under a variety of factual situations in claims submitted to and decided by this Board over a long period of years. It has now been conclusively established under these Board decisions that no one other than telegraphers and dispatchers may "handle" train orders where the rule is in effect; that the meaning of the words "to handle" is the receiving, copying, repeating and delivering of the train orders. (Awards 86, 709, 1096, 1166, 1169, 1170, are illustrative.)

Under the factual situation here confronting the Board, however, the issue is a much narrower one: Where the standard train order rule is in effect, may the Carrier require a Telegrapher to leave train orders in a specified place for pickup by a train crew, or must the delivery be made to the crew by the Telegrapher personally?

This precise issue under substantially the same facts as are present here has been dealt with by the Board in a long line of cases going back almost a quarter of a century to Award 1166 (Referee Hilliard) handed down in 1940. Eighteen out of the twenty-one cases decided have held that personal delivery by the Telegrapher to the crew is required. The three denial awards (1821, 8327, 11473) held delivery complete as to the Telegrapher when orders were placed in waybill box or other receptacle for pick-up by the train crew.

It is apparent that the weight of authority, in terms of numbers of Awards and under years of consistent interpretation and application of the rule, clearly sustains Petitioner's position on the issue and facts present here. This is not to say that the denial Awards were unsound, or palpably in error. What disposes of the issue, in our opinion, is the principle of stare decisis. Where, as here, the Board is confronted with a long line of precedents which first postulate and then maintain a consistent interpretation of contract language we should refrain from disturbing what ought to be a settled matter. What the Board said in Award 11788 (Referee Dorsey) is appropriate:

"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 Employee-Carrier relationships in derogation of the objectives of the Act."

In view of the foregoing, this claim will be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1964.

**CARRIER MEMBERS' DISSENT TO AWARD NO. 12240,
DOCKET NO. TE-10601**

The claim alleges a violation of the Agreement when Carrier "failed and refused to permit Operator G. L. Hawkins to personally deliver train order No. 315 to train No. 86 at Birmingham Yard."

There is no requirement in the Agreement or any other rule of the Carrier that telegraphers be permitted to personally deliver train orders to addressees.

As reliance is placed upon Award 11788, our dissent to that Award is, by reference, made a part of this dissent.

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