

Award No. 12311
Docket No. TE-10777

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Louisville and Nashville Railroad that:

Carrier violated and continues to violate the agreement between the parties when it requires or permits employes not covered by the agreement to receive and copy orders governing the use of main tracks.

1. (a). Violations occurred at locations where an operator is employed, but was off duty at the time, as follows:

Madisonville, Tennessee on January 23, 1957,
Williamsburg, Kentucky on February 13, 14, 1957,
Barbourville, Kentucky on January 28, 29, 1957,
Stanford, Kentucky on February 25, 1957,
Verbena, Alabama on January 27, 1957,
Deatsville, Alabama on January 29, 30, February 1, 4, 1957,
Goodlettsville, Tennessee on March 6, 1957,
Sebree, Kentucky on March 6, 1957,
Brandenburg, Kentucky on March 21, 1957,
Hawesville, Kentucky on March 22, 1957,
Ft. Deposit, Alabama on May 13, 1957.

(b). Because of the above violations, Carrier shall compensate, in the amount of a minimum call payment, the following employes:

O. L. Douglas, Agent-Operator, Madisonville, Tennessee
on January 23, 1957,
A. Kidd, Agent-Operator, Williamsburg, Kentucky on
February 13, 14, 1957,

C. N. King, Agent-Operator, Barbourville, Kentucky on January 28, 29, 1957,
J. L. Judd, Agent-Operator, Stanford, Kentucky on February 25, 1957,
O. N. Esco, Agent-Operator, Verbena, Alabama on January 27, 1957,
W. B. Higgins, Agent-Operator, Deatsville, Alabama on January 29, 30, February 1, 4, 1957,
J. R. Dowden, Agent-Operator, Goodlettsville, Tenn. on March 6, 1957,
P. J. Prather, Agent-Operator, Sebree, Kentucky on March 6, 1957,
M. W. Wathen, Agent-Operator, Brandenburg, Kentucky on March 21, 1957,
N. Burch, Agent-Operator, Hawesville, Kentucky on March 22, 1957
C. A. Price, Agent-Operator, Ft. Deposit, Alabama on May 13, 1957.

2. (a). Violations occurred at locations where no operator was employed on the dates shown as follows:

Haddix, Kentucky on March 8, 1957
Altro, Kentucky on March 7, 1957
Willar, Kentucky on March 7, 1957
Woodbine, Kentucky on February 13, 1957
Rockhold, Kentucky on February 14, 1957
Varilla, Kentucky on February 18, 1957
Page, Kentucky on February 18, 1957
Mile Post 51, Louisville Division, on February 20, 1957
Cozatt, Kentucky on March 11, 1957
Coosada, Alabama on January 14, 31, February 4, 1957
Mile Post 427, Birmingham Division on January 15, 1957
Calera, Alabama on January 21, 22, 1957
Vera, Alabama on January 29, 30, 1957
South Switch, Elmore, Alabama on January 29, 1957
Prattville Jct., Alabama on January 29, February 4, 1957
Speigner, Alabama on January 30, 1957
Mountain Creek, Alabama on January 31, February 1, 1957
Elmore, Alabama on January 31, February 4, 1957
Wadsworth, Alabama on February 1, 1957
Mile Post 484, Birmingham Division on February 4, 1957
Greenbrier, Tennessee on March 6, 1957
Bakers, Tennessee on March 6, 1957
Medora, Kentucky on March 20, 21, 1957
Stephensport, Kentucky on March 22, 1957
McGees, Alabama on May 2, 1957
Mile Post 558, N.O.M. & P. Division, on May 1, 1957
Catoma, Alabama on April 24, 1957.

(b). Because of the above violations, Carrier shall compensate, in the amount of a day's pay, the senior idle employe, extra in preference, on the seniority district in which the station named is located, on each of the dates mentioned.

3. (a). Violations occurred as follows at stations where an operator is employed and was on duty at the time:

Deatsville, Alabama on January 14, 29, 30, 31, 1957
 LaFollette, Tennessee on January 23, 1957
 Mentor, Tennessee on January 23, 1957.

(b). Because of the above violations, Carrier shall compensate, in the amount of a day's pay, the senior idle employe, extra in preference, on the seniority district in which the station named is located on each of the dates mentioned.

4. On subsequent dates on which violations occur during the pendency of this dispute, Carrier shall be required to compensate employes under the agreement as follows:

At a station where an operator is employed but off duty, compensate the occupant of the operator's position at that station in the amount of a minimum call payment.

At a location where no operator is employed, compensate the senior, idle employe under the agreement, extra in preference, on the seniority district, in the amount of a day's pay.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

The instant dispute involves the handling of orders, in CTC (centralized traffic control) territory, issued by train dispatchers authorizing track motor cars to use a main track between specified locations during a specified period of time. These are sometime referred to as "track permits" or "track limit orders." The track limit orders are received by the employe in charge of a track motor car. A record is kept by the train dispatcher of all such orders issued; there is a dispute between the parties as to whether the track motor car operator makes a record of the order or trusts to his memory — this will be discussed later in this submission.

The track limit order format is as follows:

.....195.....

TRACK CAR MOVEMENT

NAME

LOCATION

TRACK CAR NO.

FROM

TO

TIME AUTHORIZED

LIMITS

.....

TIME REPORTED CLEAR.....

say that employes not covered by that agreement are "receiving and copying orders governing the use of main tracks."

Carrier has shown that such statement is erroneous. No orders are necessary. None are issued and none are copied. It is only necessary that the motor car operator receive verbal authority from the train dispatcher to make the desired movement, and the necessary protection is provided by the dispatcher through CTC machine without the necessity of written orders.

CONCLUSION

It is the position of the carrier that telegraphers do not have exclusive rights to the use of telephones, and that when track car operators secure verbal permission from train dispatchers to make movements in CTC territory, no provision of the telegraphers' agreement is violated. Furthermore, the last sentence of section 2(a), Appendix A, specifically extends to section foremen and other employes such as signalmen, track supervisors, etc., the right to communicate with train dispatchers by telephone in CTC territory. As before stated, in the discussion of this case on the property, attention of the employes was directed to Third Division Award 6825, wherein Referee Shake held that such telephone conversations, even though written, are not "communications of record in the sense that that term has been held to be decisive in determining whether telegraphers' work has been performed."

The claim of the employes is wholly lacking in merit, has no support under the agreement, and should be denied in its entirety.

OPINION OF BOARD: The facts are not in dispute. Track or motor cars have obtained permission by telephone from train controllers in Centralized Traffic Control territory without the use of telegraphers which the Petitioner claims to be a violation of its Agreement with the Carrier.

The Petitioner argues that the permits are essentially train orders which have traditionally been the work of telegraphers and therefore should be exclusively reserved to the telegraphers by reason of the Scope Rule of the Agreement, Rule 15, governing train orders, and Appendix A.

The decisions of this Board are in conflict as to whether these permits are train orders or not. If we were to consider them train orders, Appendix A, 3 (a) would apply.

Appendix A 3(a) reads as follows:

3. It is agreed that the following use of telephones shall not be considered a violation of this agreement:

(a) The use of telephones by trainmen or enginemen in automatic block signal territory to obtain authority to pass automatic block or interlocking signals in restrictive position; or the use of telephones under the Operating Rules governing in Centralized Traffic Control territory."

The plain language of this quoted section permits the use of telephones in CTC territory if in compliance with the operating rules. The Petitioner, however, has raised two objections to this common sense interpretation. It says, first, that the "or" should be read in the conjunctive as "and", making the second phrase an extension of the first and thereby restricting its application to trainmen and enginemen.

The Petitioner also argues that the only operating rules applicable are those that were in effect on April 1, 1945 when Appendix A was negotiated.

It is our opinion that the Petitioner urges a construction so narrow it would lead to absurdities. Under its construction, a trainman seeking information necessary for the progress of his train may use the telephone, but an operator of a motor car may not. The former use has consistently been held to be a train order, traditionally handled by telegraphers. It has, by Appendix A, been removed as telegraphers' work. The latter, on which the Board has had doubts that it is a train order, would become telegraphers' work if we adopted this narrow interpretation urged by the Petitioner.

It is our opinion that 3 (a) was not meant to be so narrowly interpreted. In bargaining away its rights to handle communications governing the movement of trains in CTC territory, the Petitioner surrendered a substantial right. It must have understood that telegraphers would be furloughed because they would not be needed. It is difficult to imagine that they intended that telegraphers be kept on to handle communications by motor car operators, while yielding on communications by trainmen and enginemen.

This absurd consequence is avoided if the "or" is read in the disjunctive as "or". The second phrase is then not an extension of the first, but a separate, distinct idea. This conclusion is buttressed by the fact that a semi-colon was used rather than a comma and that the phrase "the use of telephones" was repeated. It is our opinion that the use of telephones in the handling of train orders in CTC territory was not restricted to trainmen and enginemen, but was meant to apply to all personnel under the Operating Rules.

The second objection is that only those operating rules in effect prior to the adoption of Appendix A have pertinency under 3 (a). It follows, according to the Petitioner, that since Operating Rules 575, 576 and 577, governing the operation of track cars in CTC territory were adopted after Appendix A, they do not apply.

Again, the very narrow construction urged by the Petitioner would lead to absurd consequences. It would exclude Operating Rules which codify existing practice simply because the practice was formalized after Appendix A was adopted by the promulgation of a rule.

We are not here dealing with a rule which substantially changed practice in violation of the Agreement. It is Carrier's contention that track car movements in CTC territory have frequently been arranged by telephone in CTC territory since the 1940's on this property. The Organization does not dispute this. The establishment of these rules, insofar as they authorize communication for the issuance of track permits, did not, therefore, substantially affect the relation between the parties. If this practice was permitted without a rule, with no objection from the Organization, the adoption of a rule formalizing the practice, after Appendix A was adopted, does not, *ipso facto*, make the prior permitted practice improper. The date of the adoption of Rules 575, 576 and 577, insofar as they permit the use of telephones to obtain track and time limit permission for motor trucks, is immaterial for this reason.

Rules 575, 576 and 577, in effect, applied to motor cars the Operating Rules which previously applied to work trains. If telephone messages concerning track car movements are not considered train orders, there is no authority to deem them telegraphers' work under the Scope Rule. The Scope Rule in this case is general in nature. Where this is so, this Board has consistently held

that exclusivity must be established by past practice and long usage. Here, the Petitioner has not sustained its burden of proving that track car permits in CTC territory have by history and custom been performed exclusively by telegraphers.

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 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 Carrier did not violate the Agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March 1964.