

Award No. 12496
Docket No. TE-10651

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
RICHMOND, FREDERICKSBURG AND POTOMAC
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Richmond, Fredericksburg and Potomac Railroad, that:

1. Carrier violated the terms of the Telegraphers' Agreement, when and because it permitted and required Conductor Wingfield on Extra 103 South to handle (receive, copy and deliver) train order No. 6 addressed to his train at Dahlgreen Junction, Virginia, October 2, 1957.
2. Carrier shall compensate the senior, idle employe (extra in preference) for a day's pay—eight hours at the applicable rate October 2, 1957 for the aforesaid violation. The name of the employe entitled to the compensation to be determined by a joint check of the Carrier's records.
3. Carrier violated the terms of the Telegraphers' Agreement, when and because it permitted and required Conductor C. R. Wade on Extra 102 to handle (receive, copy and deliver) train order No. 13 addressed to his train at Dahlgreen Junction, Virginia, October 3, 1957.
4. Carrier shall compensate the senior, idle employe (extra in preference) for a day's pay—eight hours at the applicable rate October 3, 1957 for the aforesaid violation. The name of the employe entitled to the compensation to be determined by a joint check of the Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into between the Richmond, Fredericksburg and Potomac 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 April 10, 1953, and is on file with this Division. The agreement, by reference, is incorporated into this submission as though set out herein word for word.

When proper consideration is given to everything that has been heretofore stated, and due note is taken of its form and position as incorporated in Article 21, there can be little doubt that subsection (b) supra, must be regarded as qualifying the force and effect to be given the provisions of subsection (a), supra, which precedes it. So regarded, we believe that inherent in such subsection, and certainly if not inherent, clearly implied therein, is the proposition that — so far as the particular agreement now in force and effect on the involved property is concerned — if train orders are handled at stations where no member of the craft is employed, they may be handled by other employees."

* * * * *

In conclusion, the Carrier submits it has shown that the claims are without merit, unsupported by any rules, practice or precedent, or on any logical premise, but merely constitute an attempt on the part of the Organization to secure through an award from the Board an interpretation not intended by the parties when the rules were negotiated and is a further effort to force the Carrier to establish telegraphers' positions where none are required and could not possibly serve any useful purpose. It is clearly an unjustified make-work demand and all the claims involved should be dismissed or denied for the reasons stated herein.

OPINION OF BOARD: The facts in this case are similar to those which we considered in Award No. 12494 (TE-10649) and that award is controlling here.

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 Carrier violated the Agreement to the extent indicated in the Opinion.

AWARD

Claims No. 1 and 3 are sustained.

Claims No. 2 and 4 are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1964.

**CARRIER MEMBERS' DISSENT TO AWARDS 12494, 12495,
AND 12496, DOCKETS TE-10649, TE-10650, AND TE-10651**

Referee Benjamin H. Wolf

In these Awards the majority committed error by failing to apply the well-established rule of contract construction, that of construing the rule in its entirety, each paragraph being read in light of the others, to ascertain the parties' intent. (Awards 11767 and 10785.) Had this well-established rule been applied, the consistent, harmonious and sensible result would have been that Article XVII applied only at stations or locations where an employe covered by the Agreement is employed.

For this and other reasons the awards are erroneous and we dissent.

R. A. DeRossett

R. E. Black

W. F. Euker

G. L. Naylor

W. M. Roberts