

Award No. 12912
Docket No. TE-10939

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk Southern Railway that the Carrier violated the Agreement between the parties:

(a) When it permitted or required Conductor J. E. Jeffries, in charge of Work Extra 1608, to handle (copy, receive, and deliver) train order No. 61 at McCullers, North Carolina on September 27, 1957.

1. Because of such violative action Carrier shall now be required to pay the senior, idle operator, extra in preference, a day's pay, at the hourly rate of \$1.996; such senior, idle operator on this date being D. S. Carroll.

2. That the dispatcher's telephone shall be removed from McCullers as required by the Chicago Memorandum of Agreement dated May 20, 1937, or else an operator's position be reestablished at that point, and until that is accomplished the senior, idle operator, extra in preference, shall be paid a day's pay for each day said telephone is retained, beginning with January 14, 1957.

(b) When it permitted or required the Star (*) non-telegraph, non-telephone freight agent at Walstonburg, North Carolina to handle (copy, receive, and deliver) train order No. 50 for train Extra 1603 North at Walstonburg, October 15, 1957; also to handle (copy, receive, and deliver) train order No. 60 for train Extra 1507 North at Walstonburg, October 17, 1957.

1. Because of such violative actions Carrier shall be required to pay the two senior, idle operators, extra in preference, a day's pay each at the hourly rate of \$2.098; such senior, idle operators, on October 15, and 17, being J. J. Meade and J. O. Carroll.

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2. The agent-operator's rate of pay shall be restored to the Walstonburg agency and said rate shall continue so long as the dispatcher's telephone remains at or about the station, and until such time as this telephone is removed as stipulated in the Chicago Memorandum Agreement of May 20, 1937, the senior, idle operator, extra in preference, shall be paid a day's pay for each day the telephone remains.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties bearing effective date of August 1, 1957, a copy of which, as amended, is on file with the Board, and by this reference is placed in evidence as a part of this submission. Its provisions as to working conditions and rates of pay apply to such employees as are engaged by the Carrier to agent-telephoners, clerk-telegraphers, levermen, towermen, operators of mechanical telegraph machines, block operators; such station agents (freight or ticket) and assistant agents listed in the Wage Scale; and such additional positions as may be created or established within the scope of the Agreement.

As reflected by the Statement of Claim, the Carrier permitted and/or required a conductor not covered by the Agreement to copy and handle a train order at McCullers; and a Star (*) non-telegraph agent to copy and handle the train orders at Walstonburg on the dates enumerated in the Statement of Claim. No emergencies prevailed. In the absence of an emergency such work is delegated entirely to employees of the telegrapher-telephoner class set out in Article 1, Scope.

Article 2, as to the Basic Day, for employees covered by the Agreement stipulates that:

"Eight (8) consecutive hours, exclusive of the meal period, shall constitute a day's work, except that where two or more shifts are worked, eight (8) consecutive hours with no allowance for meals shall constitute a day's work. . . ."

Article 23 (b) provides that:

"All positions covered by this Agreement will be filled by employees holding seniority, except in case of emergency."

Article 24 (c) states that:

"Temporary positions or vacancies known to be of less than ninety (90) days' duration will be filled by the senior competent available extra employee."

Article 28 as to Extra Employees provides that:

"When necessary to protect the service, extra men may be used on either seniority district and will retain seniority on their home district."

These violations have been handled with the Carrier in conformity with Section 3 (i) of the Railway Labor Act and, having failed of adjustment, are now referred to your Board for adjudication.

POSITION OF EMPLOYEES: As set out by the Statement of Claim and Employees' Statement of Facts, this dispute has to do with violations of a

September, 1952, on which he transmitted these messages and reports of record, and certainly, if such constituted telegraphers' work, which was what they contended and for which they accepted the afore-mentioned settlement, then how do they make a distinction between "messages of record" and "train orders" under the Scope Rule.

Petitioners will probably also cite Article 13 (a) in support of their claims; that rule provides:

"When regular telegraph and/or telephone duties are added to a non-telegraph or non-telephone position the rate of pay shall be increased to conform to that of existing positions of similar work and responsibility, such rate shall become effective as of the date the change takes place."

but your attention is directed to the fact that such rule contemplates such duties shall be "regular" and by no stretch of imagination can the few isolated instances set forth by petitioners in this claim be considered as placing such duties "regularly" upon these employees at the points involved.

The claim is without contractual basis or merit, is contrary to previous decisions, and/or interpretations and accepted settlements, and should be declined. As further evidence of the real meaning and intent of the Train Order Rule, the respondent respectfully cites from the "Oral Argument" of the same general chairman who progressed this claim, in Docket No. TE-462, on which Award 446 was rendered, and carrier assumes that such oral argument is contained in the official files of the Third Division and is, therefore, available and acceptable as a part of the record; in that argument with respect to the train order rule he stated that the rule:

"confines the handling of train orders at offices where telegraph or telephone is installed and used for the purpose of handling train orders; where employees covered by this agreement are employed and are available or can be promptly located, except in emergency. It is, therefore, in contravention of the agreement to transfer the handling of train orders to employees not under the agreement at offices where employees under the agreement are employed and are available, or can be promptly located."

and respondent carrier respectfully submits that he therein has correctly set forth the proper intent of the rule, and such intent has been expressed also as being the proper one by Referee Douglass in Award 5866, by Referee Parker in Award 6863, and by Referee Rodgers in Award No. 1 of Special Board of Adjustment No. 226, to all of which reference has been made hereinabove.

OPINION OF BOARD: These claims arose by reason of acts occurring at McCullers, North Carolina on September 27, 1957 and at Walstonburg, North Carolina on October 15 and 17, 1957. Such acts consisted of conductors and non-telegrapher agents handling train orders. Claimants ask to be compensated for a day's work in each instance and also ask this Board to order the telephones located at McCullers and Walstonburg be removed as required by Chicago Memorandum Agreement dated May 20, 1937.

The acts complained of were similar or identical to several acts which were the subject of claims pending before this Board on February 13, 1958. It was suggested that these claims be held in abeyance until such pending

claims were decided and then disposed of in accordance with the rulings in those claims. However, it appears that such suggestions were not agreeable for the reason that the relief prayed for differed from the pending claims in that here, prayer was made for telephone removal as well as compensation. In the pending cases, only compensation had been prayed for but not telephone removal.

After Award 8687 was rendered in one of the cases pending, involving similar acts, the Carrier and the telegraphers entered into an Agreement dated September 3, 1959, specifying the compensation to be paid to telegraphers when conductors and non-telegrapher agents handled train orders. This Agreement settled the pending disputes and would provide a basis for settling this dispute except insofar as the prayer for telephone removal is concerned. It should be further noted that Carrier has agreed to compensate Claimants in accordance with the Agreement dated September 3, 1959. We therefore hold that Claimants should be compensated in accordance with such Agreement i.e., the senior idle extra operators, D. S. Carroll, J. J. Mcade and J. D. Carroll, shall be compensated for four hours at the prevailing system average hourly rate.

We now move to the second portion of the relief prayed for by the telegraphers. They ask that this Board order and direct the removal of dispatcher's telephone from McCullers and Walstonburg. They cite the Memorandum of Agreement reached May 20, 1937 at Chicago, Illinois, between these parties to support their contention that the telephones should be removed. However, this Board has frequently and consistently refused to interpret this Agreement in accordance with the telegraphers' contention. See Awards 9572, 9573, 10825, 10836, 11509, 11512, 11610, 11611, 12630, 12629, 12628. We therefore deny telegraphers' prayer that the telephones be removed.

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 has been violated.

AWARD

Claim sustained in part and denied in part in accordance with the above opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1964.

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

220 South State Street

Chicago 4, Illinois

AWARDS ON WITHDRAWN CASES

The following are Division Dismissal Awards covering disputes withdrawn by the parties from further consideration by the Division:

AWARD NO.	PARTIES TO DISPUTE	DOCKET NO.
12913	B.R.C. — The Chesapeake & Ohio Railway Co.	CL-12319
12914	B. of M.W. — Chicago and Western Indiana Railroad Company	MW-12549