

Award No. 12921
Docket No. TE-11481

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
PANHANDLE AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Panhandle & Santa Fe Railway that:

1. The Carrier violated and continues to violate the Agreement between the parties when, beginning January 23, 1958, it required or permitted an employe not covered by the Telegraphers' Agreement to handle and deliver train orders and clearance card to the Conductor of Train No. 4 at the passenger station at Amarillo, Texas; and

2. The Carrier shall be required to pay the occupant of the Telegrapher-baggage position at Amarillo, Texas, assigned 3:45 P.M. to 11:45 P.M. the equivalent of three hours' pay each day beginning January 23, 1958 and continuing until the violation is discontinued.

EMPLOYES' STATEMENT OF FACTS: An Agreement between the parties, bearing effective date of June 1, 1951, is in evidence.

At Amarillo, Texas, prior to January 23, 1958, the Carrier employed telegrapher-baggage men in around-the-clock service at the passenger station. Three shifts being assigned as follows:

7:45 A.M. to 3:45 P.M.
3:45 P.M. to 11:45 P.M.
11:45 P.M. to 7:45 A.M.

On January 21, 1958, the following wire was addressed to the employes involved:

"AMARILLO — January 21, 1958

PX

KLEINSTEIBER — AMARILLO FREIGHT
OPERATOR — AMARILLO BAGGAGE

" * * * it being recognized that the procedures established by such Rule 217 are not in violation of any rule of this Agreement."
(Emphasis ours.)

contained in the rule clearly indicates that Section 1 of Article XIII, cited by the Employees is not applicable in these circumstances and has not been violated.

It is apparent that the Employees would like to see Section 6 of Article XIII eliminated from the Telegraphers' Agreement for the obvious reason that they might then fall heir to a ruling that Article XIII, Section 1, of that Agreement gives telegraph service employes (and train dispatchers) on this property the right—to the exclusion of all other employes—to send, receive, deliver hand-to-hand to addressees, etc., all train orders under the guise of some rulings from this Board to the effect that in the absence of any agreement between the parties providing for handling under the procedure outlined in Operating Rule 217, Operating Rule 217 was thus in conflict with the Agreement rules and that the Agreement rules should prevail. As further evidence of their wish to have Section 6 of Article XIII eliminated from the Telegraphers' Agreement, the Employees on May 14, 1959, served formal notice under the provisions of the Railway Labor Act, as amended, of their desire to revise the current Telegraphers' Agreement, which proposed or requested, among other things, the elimination of Section 6 of Article XIII.

In conclusion, Carrier respectfully reasserts that the claim of the Employees in the instant dispute is without merit or support under any of the rules contained in the Telegraphers' Agreement, that the handling accorded by the Carrier was not violative of any rule of the Telegraphers' Agreement, and, in fact that the handling by Carrier is fully supported by the Agreement rules. Carrier therefore urges that this Board, under all the facts and circumstances presented herein, deny the Employees' claim in its entirety.

OPINION OF BOARD: On January 23, 1958, Carrier abolished the Third Trick Telegrapher-Baggage-man's position and assigned train orders and clearance cards to be copied by an operator at the Junior Yard Office, Amarillo, Texas. Under this method of handling train orders, the operator gave them to a messenger who then delivered them to the Conductor of Train No. 4 at the passenger station.

Organization makes claim that Carrier violated the Telegraphers' Agreement when it permitted the messenger not covered by this contract to handle and deliver train orders and clearance cards. To sustain its position, it relies upon Section 1, of Article XIII which provides that no employe other than covered by the Agreement 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 an emergency.

In its denial, Carrier contends that it properly authorized the messenger to handle these orders and cards under Section 6 of Article XIII. This Section includes Operating Rule 217 which became part of the Collective Bargaining Agreement in 1951. Operating Rule 217 reads as follows:

"A train order for delivery to a train at a point not a train order office, or at which the office is closed, must be addressed: To C & E at, care of, naming the conductor or employe in whose care the order is sent and who is responsible for its delivery. The numbers of such train orders and the number of the clearance card accompanying them must be shown in the usual manner on clearance card of the train making delivery.

When such orders restrict the superiority of the train to which delivery is to be made, an extra copy of the clearance card accompanying them must be provided for the employe in whose care they are sent, upon which he must obtain the signatures of the conductor and engineman of the train to which delivery is made; he will then deliver it to the operator at the first office of communication for immediate transmittal to the train dispatcher, after which it must be preserved at that office. 'Complete' must not be given to the order for the inferior train until these signatures have been received by the train dispatcher."

Carrier takes the position that when orders are issued under Operating Rule 217, it has the right to assign the handling of such orders to any employe it selects in accordance with Section 6 of Article XIII. It does not restrict the word "employe" in the rule to a particular employe or class of employes. Furthermore, it maintains that this Operating Rule concerns the handling of train orders and clearance cards to be delivered in situations as in the instant case and not necessarily between trains.

In examining the Rule as a whole, we find that it concerns delivery of orders from train to train; and thus, it is not applicable to the case at hand in which the order was messengered from the Junior Yard Office at Amarillo, Texas, to the Amarillo passenger station and then delivered to the Conductor of Train No. 4. Rule 217 contemplates that train orders for other trains must be addressed to the train involved in care of a member of the train crew of the train making the delivery. This Rule does not permit employes other than members of a train crew of a train making the delivery to handle train orders. The messenger is not a member of any train crew. Accordingly, we hold Section 1 of Article XIII was violated. The claim is sustained and Carrier shall be required to pay the occupant of Telegrapher-Baggage-man position the equivalent of three hours' pay each day beginning with January 24, 1958, and continuing until the violation is discontinued.

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 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 28th day of September 1964.