

Award No. 13360
Docket No. TE-12790

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Colorado & Southern Railway Company, that:

CLAIM NO. 1

1. The Carrier violates the terms of an Agreement between the parties hereto when commencing Tuesday, May 24, 1960, and each Tuesday thereafter it permits or requires a Yard Clerk, an employe not covered by the Telegraphers' Agreement at Cheyenne, Wyoming, to handle Clearance Card Form A for delivery to CB&Q Train No. 160.

2. The Carrier shall, because of the violation set out in Part One of this statement of claim, compensate J. R. Noreen, regular assigned Telegrapher "C" Office, Cheyenne, a "call" in accordance with the provisions of Rule 9 for each Tuesday commencing May 24, 1960, and for each Tuesday thereafter so long as the violation continues.

CLAIM NO. 2

1. The Carrier violates the terms of an Agreement between the parties hereto when commencing Friday, May 27, 1960, and each Friday thereafter it permits or requires a Yard Clerk, an employe not covered by the Telegraphers' Agreement at Cheyenne, Wyoming, to handle Clearance Card Form A for delivery to CB&Q Train No. 160.

2. The Carrier shall, because of the violation set out in Part One of this statement of claim compensate D. Peace, regular assigned Telegrapher "C" Office, Cheyenne, a "call" in accordance

with the provisions of Rule 9 for each Friday commencing May 27, 1960, and for each Friday thereafter so long as the violation continues.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective October 1, 1948, including changes agreed-to interpretations as of the date of re-issue, January 1, 1955, rate of pay effective September 3, 1954, and as otherwise amended.

At Page 36 of said Agreement, under Rule 38 are listed the positions existing at Cheyenne, Wyoming, on the effective date thereof. The listing for your ready reference reads:

LOCATION	CLASSIFICATION	RATE OF PAY
Cheyenne Junction	T	\$1.925
	T	\$1.925
	T	\$1.925
Cheyenne	T	\$1.895

As a means of relating the above listed positions to the facts of these cases, the position listed for Cheyenne is located in the passenger station. It is referred to in the record as "C" Office. The position listings for Cheyenne Junction are those now located in the Yard Office and referred to in the record as "DI" Office.

At a time not shown in the record, one of the three positions in "DI" Office was discontinued. The positions remaining in "DI" Office are the first and second shift Telegrapher positions. Also at a time not shown in the record, a second position was added at "C" Office in the passenger station.

The facts in Claim No. 1 are: J. R. Noreen, hereinafter referred to as Claimant, is a regularly assigned occupant of Relief Position No. 2. He performs rest day relief service at "DI" Office on Saturday and Sunday and at "C" Office on Monday, Tuesday and Wednesday. Insofar as the facts of these cases are concerned, the Claimant's assignment on Tuesday of each work week is relieving the regular occupant of the third shift Telegrapher's position in "C" Office, Cheyenne, with assigned hours 10:00 P. M. - 6:00 A. M.

There is no Telegrapher on duty at Cheyenne "C" Office between 6:00 A. M. and 9:00 A. M.

Prior to Tuesday, May 24, 1960, CB&Q Train No. 160 was scheduled to depart Cheyenne during the hours in which the first shift Telegrapher was on duty, namely 9:00 A. M. - 5:00 P. M. The records show that CB&Q Train No. 160 was at that time called for 9:30 A. M. and that the on-duty Telegrapher handled (received, copied and delivered) train orders and/or clearance cards Form A for this train. The record also shows, that on or about May 1, 1960, the schedule for CB&Q Train No. 160 was changed to a new on-duty time of 7:05 A. M. to depart Cheyenne at 7:30 A. M. There being no Telegrapher on duty in "C" Office at that time to (handle) the train orders and/or Form A Clearance Card for CB&Q Train No. 160, the Carrier required the Claimant to leave clearance card Form A pinned to the register book in "C" Office at the end of his tour of duty (6:00 A. M.) to be picked up by a Yard Clerk, an employe not covered by the Telegraphers' Agreement

port of the Carrier's position in this particular phase of the dispute, see Third Division Award 7343.

In Award 8327, in referring to a rule identical in all material respects to Telegraphers' Rule 29 on the property of the respondent Carrier, Referee Whitley P. McCoy said, "The train order rule is quite clear and it has not been violated. No other than a Telegrapher handled the train orders in question. Neither the Scope Rule nor the Train Order Rule is violated except when some employe other than a telegrapher performs telegraphers' work. For these reasons the claim will be denied."

In the instant case, although the Utility Clerk may have transported the Clearance Form "A" the short distance of two hundred ninety feet while carrying the train registered to the yard office, this does not constitute a "handling" within the meaning of Rule 29. The entire purpose of the trip was to get the register over to the Chief Yard Clerk's desk. Any movement of the Clearance Form "A" was purely incidental to the movement of the Train register and in no way assisted or intervened in the handling or delivery between the Telegrapher and Conductor of Train No. 160.

The Carrier in the instant dispute is confident that your Honorable Division will not find that the movement of the train register two hundred ninety feet, by a Clerk, for the exclusive use of another Clerk, was the performance of "Telegraphers' work." Nor can you, the Carrier with deference holds, find that the Scope Rule or the Train Order Rule of the Telegraphers' Agreement was violated, as the petitioning Organization, without valid support therefor, contends.

In conclusion, the Carrier further holds that the instant claim is devoid of contractual support, is wholly without merit and, by reason thereof, urges your august tribunal to so decide. For, should you decide otherwise, you will be foisting upon the respondent Carrier some kind of a new and oppressive rule never proposed or intended through years of collective bargaining.

(Exhibits not reproduced.)

OPINION OF BOARD: In this dispute, a Yard Clerk would pick up a Clearance Form "A" at the passenger station and take it to the yard office. The Agreement herein has the standard train order rule consequently, the issue will be resolved by determining whether or not the Clearance Form "A" handled by the Yard Clerk is a train order. A copy of the Clearance Form "A" is not a part of the record. The Petitioner has presented evidence that the "form" is a train order. We find no evidence presented by the Carrier to rebut such a finding.

We therefore find that the Carrier violated Rule 29 of the Agreement.

HANDLING TRAIN ORDERS

"No employee other than covered by this 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 emergency, in which case the operator will be paid for the call. (See Appendix No. 9)"

The claim is for a call on each Tuesday and Friday beginning with May 24, 1960 and May 27, 1960. The evidence is insufficient to sustain a continuing claim. We do sustain the Claim No. 1 for May 24, 1960 and Claim No. 2 for May 27, 1960.

There is no evidence in the record from which we can determine the exact time the Claimants would have been held over. Although, the schedule is for 7:30 A. M., there is no evidence that they departed at that time. With evidence to determine how long it would have been necessary to hold the Claimants over, the proper payment would be time and one-half for the exact time necessary to have held them over. Lacking such evidence, we sustain the claims for a call.

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 Employee involved in this dispute are respectively Carrier and Employee 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

Claims sustained as per opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.