

Award No. 13393
Docket No. TE-13695

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

READING COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Reading Company, that:

1. Carrier violated the parties' Agreement by requiring or permitting employes not covered thereby to copy and handle train orders at Montchanin, Delaware, outside of the assigned hours of the Agent-Telegrapher on March 27, 30, 31, April 3, 4 and 26, 1961.

2. Carrier shall now compensate:

(a) N. Evans, or W. Grabey, or the senior idle telegrapher, extra in preference, a day's pay (8 hours) for March 27, 30, 31, April 3 and 4, 1961.

(b) R. Meyer a call (8 hours) for April 26, 1961.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective April 1, 1946, corrected September 1, 1951, is available to your Board and by this reference is made a part hereof.

Montchanin, Delaware, is a station on this Carrier's lines, which is manned part time on a dualized basis, the occupant being required to work as follows:

Lenape	8:00 A. M. to 10:30 A. M.
Travel Time	10:30 A. M. to 11:00 A. M.
Montchanin	11:00 A. M. to 12:00 N.
Lunch	12:00 N. to 1:00 P. M.
Montchanin	1:00 P. M. to 5:00 P. M.

The above position is assigned on a Monday-to-Friday basis, with Saturday and Sunday rest days. Since our advance notice of intent to file ex parte

or telephone offices where an operator is employed. There is no dispute that Montchanin, Del., was not an open telegraph office when these train orders were issued. Secondly, the rule required that the operator employed at the location be available or can be promptly located. As stated hereinbefore, at all times in claim Mr. Meyer was either employed at Lenape, Pa., or was en-route to Montchanin, Del. Carrier maintains, therefore, that he could not be considered either available or promptly locatable for the purpose of handling train orders at Montchanin, Del., under the provisions of Article 34.

In the handling and discussion of the instant claim on the property, the Organization with respect to the handling of train orders also referred to an alleged violation of Article 1 — Scope of the agreement, which reads as follows:

“This Agreement will govern the employment and rates of pay of agents (freight and ticket as shown in the wage schedule), assistant agents, agent-telegraphers, agent-telephoners, telegraphers, telegrapher-clerks, telephoner-clerks, telephone operators (except telephone switchboard operators), towerman, leverman, tower and/or train directors, block operators, staffmen, managers of telegraph offices, wire chiefs, and operators of teletype and other mechanical machines used for transmitting and receiving communications of record, all of whom are hereinafter referred to as employees.”

With reference to the application of Article 1 to the facts in this dispute, it is the position of Carrier that the scope rule merely lists the various classes of employees whom the Organization is certified and designated to represent under the provisions of the Railway Labor Act, and who are covered by the rules of the collective bargaining agreement. It does not spell out or purport to specify any of the duties of the various occupations listed therein, nor does it, by its terms, restrict the rights of the Carrier. Carrier submits that Article 34 is a specific rule with respect to the handling of train orders and maintains, as pointed out hereinbefore, that it does not support the claim of the Organization with respect to the handling of train orders.

It is the Carrier's position that all dates in claim train orders were issue by Carrier's train dispatcher to the operator at Coatesville, the nearest open tower, to effect delivery by telephone to the crew at Montchanin, which handling did not violate any rules of agreement with the Telegraphers' Organization.

Further, Carrier desires to point out that this is a claim for penalty only and the Board has ruled in many cases that it will not penalize a Carrier in the absence of a specific rule violation. Here in this docket, there has been no violation of the specific rule — Article 34 — which refers to the handling of train orders and, therefore, Carrier maintains that there is clearly no equitable basis in the rules to inflict upon Carrier the penalty here claimed.

Under all the facts and circumstances present in this docket, Carrier respectfully submits that there has been no violation of any rules of its agreement with the Telegraphers' Organization and maintains that the claim of the Organization should be denied in its entirety.

OPINION OF BOARD: The facts, contentions of the parties, and reasoning of the Board in this case are so similar to those presented in Award

No. 13390 as to make unnecessary a repetition here. Reference thereto suffices.

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 Employes involved in this dispute are respectively Carrier and Employes 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 to the extent indicated in the 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.