

Award No. 13394
Docket No. TE-13698

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 Lenape, Pennsylvania, outside of the assigned hours of the Agent-Telegrapher on March 16, 17, 20 and 23, 1961.

2. Carrier shall now compensate:

(a) R. S. Meyer, a call (3 hours) for March 17 and 20, 1961.

(b) Senior idle extra employe, J. Hulsman or W. Grabey, a day's pay (8 hours) for March 16 and 23, 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.

Lenape, Pennsylvania, 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 Noon
Lunch	12:00 Noon 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. Mr. R. S. Meyer is the occupant of the above position, and is the Claimant named in Part 2(a) of the Statement of Claim; two claims having been filed in his favor for train order handling by non-

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.

Carrier desires to point out that the train orders in claim were received, copied by or delivered to an employee under the scope of the Telegraphers' agreement at Lenape, and handled by phone to train crew conductors. This is no different than usual and ordinary handling of train orders between telegraphers, towermen, etc., and conductors at many locations on Carrier's system and Carrier quotes below from Rule 217 of its Rules for the Government of the Operating Department as follows:

"To effect delivery of a train order by telephone to a train, the operator must give to the conductor, engineman or other employee addressed, the complete train order including his own last name. The employee so receiving the order must read it to the operator, sign it as 'received by . . .', and then deliver a copy to each person addressed.

"The operator will show on his office copy of the train order the name of the person to whom delivered by telephone and the time."

Carrier submits that clearly it is neither unusual nor improper for train service employees to handle and receive train orders over a telephone and such handling does not per se violate any rules of the Telegraphers' agreement.

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.

(Exhibits not reproduced.)

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.