

Award No. 13491
Docket No. TE-12376

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)

STATEMENT OF *CLAIM*: Claim of the General Committee of The *Order* of Railroad Telegraphers on the Southern Pacific Lines in Texas and Louisiana (T&NO) that:

1. Carrier violated the agreement between the parties when on *Saturday*, December **12**, 1959, it required and permitted an employe not subject to the agreement to handle train order at Staples, Louisiana.

2. Carrier ~~shall~~ compensate ~~Osa~~ Orum, Agent-Telegrapher, ~~Logansport, Louisiana~~, in the amount of a day's pay (8 hours).

EMPLOYES' STATEMENT OF FACTS: The agreement between the parties effective December **1**, 1946, and other supplementing agreements are available to your Board and by this reference are made a part hereof.

Staples, Louisiana, ~~is~~ located on the Shreveport Subdivision of the ~~Houston~~ Division. This subdivision extends from ~~Lufkin~~, Texas to Shreveport, ~~Louisiana~~, a distance of 114.5 miles. Train No. 218 ~~is a third-class train~~, a local freight, operating eastward over this ~~subdivision~~ daily except Sunday. Train No. 143 is a ~~second-class freight~~ train operating westward over this ~~sub~~-division daily. Train No. 145 ~~is superior by class to~~ Train No. 218. ~~On this~~ subdivision there are eight offices where telegrapher% are employed. The telegraphers' positions are filled at ~~all~~ of these offices where telegrapher8 ~~are~~ employed. The telegraphers' positions are filled at all of these offices Mondays through Fridays, but on Saturdays and Sundays ~~only~~ two offices are open, ~~Lufkin~~ at the west terminus of the &division and Shreveport at the east terminus.

On Saturday, December 12, 1969, Conductor Stephens, in charge of Train No. 218, handled (received, copied and delivered) the following train order at Staples:

"TRAIN ORDER NO. 367 Dec. 12. 1969.
TO C & E No. 218
AT Staples
NO. 143 Wait at Jordan until 9:01 P.M. for No. 218
Made Complete 7:22 P.M. Condr. Stephens—SSW"

[261]

phers, whether it be by virtue of Rule 17(A) or the Scope **Rule**, there would **have** been no necessity for proposing **any** revisions whatsoever. Then, when they did make any proposals, such were directed to Rule 17(A), which is recognition the Scope Rule did not give the exclusiveness which Petitioner⁸ now contend **it has**.

CONCLUSION: The Carrier **has** shown that this claim **is** without merit and **should** be declined because:

1. There has been no rule violated.
2. There is no **rule or** past **practice** to support the **claim**.

S. There **has** been a Train Order Rule in the Conductors' Agreement while nine Telegraphers' Agreements have been negotiated **and** when Telegraphers' Train Order Rule re-adopted.

4. Practice of employes other than **telegraphers** handling train orders **has** been in effect on this Carrier for more than 50 years, **as** more fully **set** forth in **Carrier's** submission in Third Division Docket **TE-7181**, resulting in denial **Award 7953** which is fully controlling in this **case**.

5. That the Organization has unsuccessfully made strenuous efforts on **repeated occasions to obtain**, through negotiations, **a** rule which it would need to support this claim. They are again seeking, **as** they did in Award No. 7953, to secure **a** rule through the medium of **an** interpretation by the Board which they have consistently been unable to obtain through negotiations; that **the** ORT **has** been able **to** get sustaining awards on similar claims on other carriers based **on rules** and practices in effect which were substantially the **same** as those this Organization sought on this property but did not obtain.

6. That this **all** makes it clear that the **employees seek a** new rule (which they have not been able to secure by negotiation) which is not a function of the Board to grant under the provisions of the Railway Labor Act,

7. That **awards** of the Third Division dictate a denial award in this case.-Awards **2817**, 4104, 4269, 4791, 5079, 6071, 6487, and **many** others, including **7953**, a **denial** award on this property.

For the **reasons** shown, this claim is entirely devoid of merit and validity, **and** should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claim arose because a conductor used a telephone, at ^s location where no telegrapher ^{was} employed, to receive ^s train order from the train dispatcher.

Telegraphers claim "exclusive" **contractual** right to the communication of train orders system wide.

In Award No. 7953, involving the same parties, issues and Agreement, **and** basically the **same** factual situation and arguments, we held that **Telegraphers** do not have the "exclusive" right which is now **again** claimed. **That** Award is incorporated herein by reference thereto.

Telegraphers contend that Award No. 7963 **is** palpably **wrong** for the following reasons:

1. **The Board** erred in interpreting the Scope Rule, which **is** general **in** nature, in the light of **custom** and practice on the Carrier instead of industry wide custom and practice;

2. The Board failed **to** give **full** consideration to **Rule 17(B)** and **Rule 17(G)** which were added to the train order Rule (Rule 17(A)) in the current Agreement;

3. The Board made an erroneous finding that train service **employees only occasionally** telephoned dispatcher⁸ for **train** orders **from locations** at which no **telegraphers** were employed; and

4. The Award, unless set aside, opens the door to the eventual elimination of all telegraphers.

We will discuss **each** of the four foregoing points in order.

POINT 1

This Board, since **its** inception, has considered hundreds of cases **involving** Interpretation of scope rules in Telegraphers' agreements, similar or **identical** to the one in the instant case. **From** this experience the Board **is** cognizant **that** there is no industry wide uniformity of custom and practice as to work exclusively assigned to telegraphers; and, **this** is true of train orders as well as other work.

The custom and practice test applied **in** Award No. 7963 is in accord with **a preponderance** of Awards of this Board involving the **issue** of **exclusive** right to certain work under a general in nature scope rule.

POINT 2

That the Board considered **Rule 17**, in its entirety, **is** apparent from **a** reading of pages 168 and 169 in Volume 76 of our printed Awards. The Board, **in** effect, rejected Telegraphers' argument that this Rule is evidence that the communication of train orders is exclusively reserved, system **wide**, to telegraphers **under** the Scope Rule. We, expressly, so hold.

POINT 3

Telegraphers' **charge** that the Board considered the **alleged** violation as a "single incident." The sentence in the Opinion that gives rise to the **assertion** must be read as a whole. It reads:

"We take pains to add that this case involves a single incident and a long continued practice, and that we decided no more than **is** before us." (Emphasis ours.)

As to the "long continued practice," the Opinion **spells** it out:

"**The** record shows that on this Carrier, for the **last** 40 or 50 years . . . **employees** other than telegraphers have **received**, on **various** occasions, train orders at stations where no telegrapher was employed, in circumstances similar to those in the **case** before **us**."

The foregoing quotations **dispel** the charge.

POINT 4

Assuming, arguendo, that the fear expressed in this Point is well **founded**, **this** Board is **not a** proper forum in which **to** seek a **remedy**.

The Board is a statutory body of limited jurisdiction. It may only interpret and **apply** collective bargaining **agreements** negotiated and executed by the disputants. It may not insert in such agreements its sense of equity or economic and labor relations predilections. Where the parties to an agreement, or one of them, find it wanting, recourse lies in the collective bargaining **procedures** prescribed in The **Railway** Labor Act.

CONCLUSIONS

We find that Award No. 7953 **is** not palpably wrong; and, **therefore** it is binding precedent. We will deny **the** Claim.

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 thia 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 Carrier did not **violate** the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. **Schulty**
Executive Secretary

Dated **at** Chicago, Illinois, **this** 27th day of April 1966.