

Award No. **13495**

Docket No. TE-13162

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY

(Texas and Louisiana Lines)

STATEMENT OF CLAIM: Claim of the General Committee of **The Order of Railroad Telegraphers an the Southern Pacific Company, Texas and Louisiana Lines** (Texas and New Orleans Railroad Company), that:

1. Carrier violated the Agreement between the parties when it required or permitted employees not covered by the Agreement to handle train orders as follows:

- a. February 5, 1961, Order No. 236, at Shumla, Texas.
- b. April 14, 1961, Order No. 158 at Shumla, Texas.
- c. May 9, 1961, Order No. 156 at Shumla, Texas.
- d. May 15, 1961, Order No. 164 at Shumla, Texas.

2. Carrier shall be required to compensate an employee under the Telegraphers' Agreement in the amount of a day's pay on each date a violation occurred as follows:

- a. February 5, 1961 -L. J. Dantone
- b. April 14, 1961 - J. W. Yarbrough
- c. May 9, 1961 - W. C. Chamberlain
- d. May 15, 1961 - L. J. Dantone.

EMPLOYEES' STATEMENT OF FACTS: The issue which gave rise to the charge of agreement violation and resultant claims was created when train service employees, not under the parties' agreement, handled (received by telephone, repeated, copied and delivered) the train orders reproduced below, in respect to each alphabetical subsection of Part 1 of the Statement of Claim, all such occurrences taking place at Shumla, Texas:

“ * * * In any event, this case involves no telegraph or telephone office ‘where an operator is employed.’ In short, the coverage of Rule 16 simply does not reach this case. * * * ”

The Carrier respectfully reiterates that the principal issue in this case has already been decided in Third Division Award No. 7953, rendered on June 8, 1957.

CONCLUSION

The Carrier has shown that this claim is without merit and should be denied, first be-cause there was no rule violated; second, there was NO rule to support the claim, and, third, there has been a train order rule in the Conductors’ Agreement while nine Telegraphers’ Agreements have been negotiated and the Telegraphers’ Train Order Rule was readopted.

Carrier asserts all conditions present in Award 7953 are present in this case and that the denial in that case is clearly controlling here, and respectfully requests that the claim be in all things denied.

OPINION OF BOARD: The issues, parties and Agreement involved in this Claim are the same as in Award No. 13491.

For the reasons stated in that Award we will deny this 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 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 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 1986.