

Award No. 13499  
Docket No. **TE-12940**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

John **H. Dorsey**, Referee

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**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 (Atlantic System), that:

1. Carrier violated the Agreement on Saturday, September 24, 1960, when it required or permitted Conductor C. S. **Lauman** of Train No. 239 to copy Train Order No. 72 at **Boutte**, Louisiana, at **8:43 P. M.**

2. Carrier shall compensate Telegrapher P. D. Austin for 8 hours' pay at time and one-half rate for the violation on Saturday, September 24, 1960.

**EMPLOYEES' STATEMENT OF FACTS:** The **Avondale** Sub-Division of this railroad extends from New Orleans to Lafayette Yard, a railroad distance of 147.4 miles. Actually **Avondale** is located on the west side of the Mississippi River from New Orleans and is the freight terminal for the Southern **Pacific** Lines. Continuous train order service is available at **Avondale** in a telegraph and train order office located at the west end of the yard. **Boutte**, Louisiana is located 12.5 miles west of **Avondale**. **Paradis**, Louisiana is located approximately 3 miles west of **Boutte**. The Carrier has a position of Agent-Telegrapher at **Paradis**, which is **assigned** five days of work per week, Monday through Friday. The Agent-Telegrapher at **Paradis** makes daily **trips** to **Boutte** for the purpose of attending to railroad business at some large industrial plants located there.

On Saturday, September 24, 1960, Train No. 239, a westbound second class freight train, left **Avondale** en route to Lafayette, which is the next terminal. This train departed **Avondale** at 7:10 P.M. Extra 431 East, which was regular eastward second class Train No. 244, arrived at New Iberia at 6:45 P. M. Extra 431 East was delayed at New Iberia until 7:35 P.M. because of a car with a hot box. Extra 431 East had arrived at New Iberia at 6:47 with the hot box and the Carrier had knowledge of this situation. It is to be observed this was before departure time of Train No. 239 from **Avondale**. New Iberia is located 101.7 miles west of **Boutte**.

Train No. 239 arrived at **Boutte** and the train dispatcher transmitted the following train order to the conductor of Train No. 239:

right, and exclusive at that, to handle **train** orders at **telegraph** or telephone offices where an operator is employed. Rule 17 (a) gives them **this** tight, but this exclusive tight, by the clear and unambiguous language of the rule, restricts the tight solely to "telegraph or telephone offices where an operator is employed". In the instant dispute, no telegrapher is employed at the point where the conductor copied the **train** order. Award 7153, with Referee Larkin, involved handling a train order at a point where no telegrapher was employed and with reference to the train order rule it was held:

"Article 20 obviously **does** not apply. By its **very** language it is applicable **only** to situations where **'an** operator is employed or **can** be promptly located'. Since no operator has been stationed at **Romine** \* \* \* we cannot conclude that this rate applied \* \* \*"

and in Award 6866, with Referee Douglass, it was held:

"Under the provisions of Rule 29 (the train **order** rule) of the Agreement it is our opinion that Section (a) would have been violated by the copying of **train** orders by train service crews if an operator had been employed at **Pastura**. \* \* \* But the **controlling** part of Rule 29 (a) insofar as this **case** is concerned is that part which qualifies the restrictions by limiting its application to offices **where** an operator is employed."

In Award 1396, with Referee Stone, it was held, with **reference** to the **train order** rule, that:

" \* \* \* 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. 7963, rendered on June 3, 1957.

#### CONCLUSION

The **Carrier** has **shown** that **this** claim is without merit and should be denied, first because 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 adopted.

**Carrier** asserts, **all** conditions present in Award 7968 **and** 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.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant held the position of **Agent-Telegrapher** at Paradis, Louisiana, Monday through **Friday**. His assigned duties **required** him to make daily **trips** to **Boutte**, Louisiana, a **distance** of 3 miles from Paradis, for the **purpose** of attending to Cattier's business at **some** large industrial **plants** located there.

On Saturday, September **24**, 1960, **Train** No. 289 arrived at **Boutte** and the train dispatcher, not in an emergency, transmitted a **train** order to the

conductor. The Claim is that the transmission violated the Telegraphers' Agreement and prays for a monetary Award to Claimant for **8 hours' pay** at time and one-half.

Rule 17 of the Agreement, insofar as material reads:

"TRAIN ORDERS AND TELEPHONES

(a) No employees other than covered by this schedule 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 an emergency, in which case ~~the~~ telegrapher will be paid for the call."

The undisputed facts establish that Claimant was employed at Boutte and Paradis, Therefore, the conductor's handling of the train order at Boutte, absent an emergency, violated Rule 1'7 (a). The Claimant is contractually entitled to pay 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 Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Diviaion of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Carrier violated the Agreement.

AWARD

Paragraph 1 of the Claim is sustained.

Paragraph 2 of the Claim is sustained only to the extant of payment for a call.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

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

Dated at Chicago, Illinois, this 27th day of April **1965**.