

Award No. 13725
Docket No. TE-12977

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

CHICAGO & NORTH WESTERN RAILWAY COMPANY
(Minneapolis & St. Louis Division)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago and North Western Railway (Minneapolis and St. Louis Division), that:

1. Carrier violated and continues to violate the Agreement between the parties when commencing on July 23, 1960, it fails and refuses to permit the occupant of the agent-telegrapher position at Morton, Minnesota to deliver train orders addressed to trains at this station but instead requires him to leave said train orders "sealed in an envelope outside of office window" at the end of his tour of duty (3:30 P. M.) which orders are later picked up by train service employees.

2. Carrier shall compensate the occupant of the agent-telegrapher position at Morton, Minnesota, C. F. Johnson or his successor, for a call payment, two hours at the time and one-half rate, on each day this violation occurs commencing July 23, 1960, and continuing thereafter until the violation is corrected.

"THE ORDER OF RAILROAD TELEGRAPHERS

3860 Lindell Boulevard

St. Louis 8, Mo.

Date: Oct. 19, 1961

Mr. S. H. Schulty, Exec. Secretary
Third Division
National Railroad Adjustment Board
1804 Consumers Building
220 South State Street
Chicago 4, Illinois

ORT File: 3364
ORT vs. C&NW Ry. (Mpls. & St. L. Div.)

Dear Sir:

Pursuant to advance notice served by this Organization under date of October 6, 1961, fifteen copies of 'Employees' Ex Parte Submission' are submitted in connection with the unadjusted dispute existing between this Organization and the Chicago and North Western Railway (Minneapolis and St. Louis Division), as set forth in said notice.

One copy by First Class Mail and fourteen copies by Parcel Post, Special Handling, sent you this date.

Yours truly,

/s/ G. E. Leighty

cc: Mr. J. W. Smith
General Chairman, ORT Div. 71
1608 Aldrich Avenue
Hudson, Wisconsin"

BEFORE THE
NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

ORT File 3364
First Submission

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

vs.

CHICAGO AND NORTH WESTERN RAILWAY COMPANY
(Minneapolis & St. Louis Division)

EMPLOYEES' EX PARTE SUBMISSION

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago and North Western Railway (Minneapolis and St. Louis Division), that:

1. Carrier violated and continues to violate the Agreement between the parties when commencing on July 23, 1960, it fails and refuses to permit the occupant of the agent-telegrapher position at Morton, Minnesota to deliver train orders addressed to trains at this station but instead requires him to leave said train orders "sealed in an envelope outside of office window" at the end of his tour of duty (3:30 P.M.) which orders are later picked up by train service employees.

2. Carrier shall compensate the occupant of the agent-telegrapher position at Morton, Minnesota, C. F. Johnson or his successor, for a call payment, two hours at the time and one-half rate, on each day this violation occurs commencing July 23, 1960, and continuing thereafter until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective September 1, 1955, as amended and supplemented, is avail-

available, in fact for a period of time did without pay, personally deliver the orders, but was denied the right to do so, in violation of the Agreement.

Rule 211 of a recent Minneapolis & St. Louis Railway Company book of Rules and Regulations states in part: 'The operator receiving this response will then write on each copy the word "COMPLETE" the time, dispatcher's initials and operator's last name in full, and personally deliver a copy to each person addressed without taking his signature.' This rule is of course, referring to a '19' train order.

Your attention is called to the following awards of the Third Division, National Railroad Adjustment Board, which fully sustain our position in this claim:

Awards 1166, 1169, 1170, 1422, 1680, 3670, 4057, 5013, 5872, 8657 and 9319.

In Award 5872, Referee John W. Yeager states: 'The clear indication of these observations is that the Scope Rule in and of itself is a grant of rights to the employees covered by the Agreement which rights are secured to them so long as the Agreement is in force, and any infringement amounts to a violation. This as a general attitude toward the Scope Rule is supported by numerous Awards. It appears to be a correct analysis.'

Please allow this claim and advise the payroll on which allowance will be made to Agent-Telegrapher Johnson.

Yours truly,

/s/ J. W. Smith
J. W. Smith
General Chairman"

Carrier's Exhibit E

OPINION OF BOARD: On July 22, 1960, Carrier abolished the second trick telegrapher position at Morton, Minnesota. After that time, the first trick agent telegrapher, at the close of his tour of duty at 3:30 P.M., was asked to put train orders and clearance cards for train No. 98 in a sealed envelope to be placed outside the office window. This envelope was then later picked up by the train crew to which it was addressed.

The agent telegrapher at Morton, Mr. C. F. Johnson, claims that Carrier violated the scope of the Agreement because Carrier does not permit him to deliver train orders personally at Morton. Mr. Johnson maintains that this work of handling train orders, which includes personal delivery to the trains, is work reserved exclusively to employees covered by the Agreement. Claimant asserts that Carrier's recognition that this work is exclusively reserved to telegraphers is shown by the fact that on Monday, his rest day, he is given a call to handle train orders. Mr. Johnson calls particular attention to Paragraph (a) (3) of the Scope Rule which provides that changes in the manner of handling train orders shall not lead to removal of that work from the Agreement.

Carrier counters with the argument that the Scope Rule contains no requirement that telegraphers must personally and physically deliver train

orders, and that the Agreement does not contain the standard train order rule, or any other rule reserving the handling of train orders exclusively to telegraphers. Furthermore, Carrier contends that there has been no change in the manner of handling train orders and therefore Paragraph (a) (3) is not applicable.

Scope Rule (a) (1) lists the positions of employees who may handle train orders, but does not reserve this work exclusively to telegraphers. Moreover, the Agreement does not include a standard train order rule granting exclusive right to this work to these employees. Claimant's interpretation that the phrase "handling of train orders" in the Scope requires personal and physical delivery of train orders by telegraphers to the train crew, is equivalent to saying that telegraphers must be on duty when train No. 98 arrives, or receive payment for the work.

The Scope Rule includes no statement that telegraphers must deliver train orders personally. When the telegrapher deposited the train order as requested by Carrier, his responsibility ended. No person not covered by the Telegraphers' Agreement was involved in the handling of the train order between the time that the telegrapher deposited the envelope addressed to the train crew, and its receipt by some member of the train crew. Since personal delivery of train orders is not part of the Agreement, it cannot be considered as work removed from under this Agreement. Hence, Rule (a) (3) of the Scope was not violated.

With respect to Claimant's contention that because on Monday, his assigned rest day, he is given a call to handle train orders, at which time he delivered the orders, allegedly proving that this work belongs exclusively to telegraphers, we find that he delivered the train orders as part of his routine because he happened to be present. Claimant's performance of this duty on his rest day does not prove that it is exclusively reserved to telegraphers. Furthermore, there is evidence that on some occasions, when the telegrapher was on duty and otherwise occupied, the train orders were picked up by members of the train crew.

The record discloses that on the property, Claimant cited a violation of an operating rule requiring personal delivery of train orders. Such a rule is not part of the Agreement but is one of the prerogatives of management, which may be changed at Carrier's discretion, as was done in the instant case, when Carrier informed the telegrapher not to deliver the train orders in person.

We find that the Scope does not require that telegraphers make personal delivery of train orders, and that the Agreement was not violated.

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 the 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 13th day of July 1965.