

Award No. 13739
Docket No. TE-13227

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Wabash Railroad, that:

1. Carrier violated the terms of an Agreement between the parties hereto when on February 11, 1961, it permitted or required Chief Train Dispatcher R. C. Henderson, an employe not covered by said Agreement at Peru, Indiana, to handle (receive, copy and deliver) train order No. 22 to Work Extra 456 at Peru Junction, Indiana.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, pay Telegrapher N. C. Been, regularly assigned at Peru, who was available and qualified to perform the work, a call in accordance with the provisions of Rule 1(c).

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto, effective September 1, 1955, and as otherwise amended.

Rule 27 of this Agreement is the Wage Scale. At page 26 of said Agreement, under Rule 27, are listed the positions existing at Peru, Indiana, on the effective date thereof. The listing reads as follows:

Location	Title	Rate Per Hour
Peru	1st T	\$2.02½
	2nd T	1.98½
	3rd T	1.98½

There is also in evidence an Agreement between these same parties, effective October 16, 1927. At page 18 of this Agreement are listed positions existing at Peru Junction on the effective date of this Agreement. The listings read:

Third, irrespective of the foregoing, it was not in violation of the telegraphers' agreement for Chief Train Dispatcher Henderson to copy the train order in question. Rule 1(c) of the telegraphers' agreements since the agreement effective November 1, 1917, by expressly referring to train dispatchers being permitted to handle train orders where telegraphers are located or employed, has evidenced the understanding of the parties that copying or delivering train orders was included in the duties of train dispatchers.

Fourth, train dispatchers have copied train orders throughout the years without objection or claims being made and such includes those copied by Mr. Henderson since becoming Night Chief Train Dispatcher at Peru, Indiana, fifteen (15) years ago.

Fifth, such copying of train orders by train dispatchers, and in particular that work done by Night Chief Train Dispatcher Henderson during the last 15 years, was not abrogated or prohibited by the telegraphers' agreements effective November 1, 1946 and September 1, 1955.

To grant the claim presented on behalf of Telegrapher Been for a three (3) hour call at straight-time rate for February 11, 1961, would require this Board to disregard the agreement and, in particular, Rule 1(c) of the telegraphers' agreement and impose upon the Carrier an obligation not agreed upon by the parties in this case.

The National Railroad Adjustment Board is without jurisdiction to amend, promulgate or grant rules, and the contentions of the Committee should be dismissed and the claim denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On Saturday, February 11, 1961, there were two telegrapher positions at Peru, Indiana. Claimant N. C. Been was regularly assigned to the first shift—hours 7:00 A. M. to 3:00 P. M.—Saturday and Sunday rest days. J. F. Key was regularly assigned to the third shift—hours 11:00 P. M. to 7:00 A. M.—Tuesday and Wednesday rest days.

It is undisputed that at or about 6:20 A. M., Saturday, February 11, 1961—while Key was on duty and during a rest day of Claimant—Night Chief Train Dispatcher Henderson copied a train order. The issue is whether this action by the Night Chief Train Dispatcher violated Rule 1(c) of the Agreement, which, in pertinent part, reads:

“(c) No employe other than those . . . covered by this agreement and train dispatchers will be permitted to handle train orders. . . .”

Resolution of the issue hinges on whether the classification “Night Chief Train Dispatcher” is included in the words “train dispatchers” as used in the Rule.

Carrier contends that the words “train dispatchers” are ambiguous and the issue must be settled by resort to past practice on the property.

We find no ambiguity. The classification “train dispatcher” has distinctive established meaning in the industry and is exclusive of any other job

classification. We find, therefore, that the handling of the train order by an employe classified as "Night Chief Train Dispatcher" violated Rule 1(c).

We will sustain the Claim.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Carrier violated the Agreement.

AWARD

Claim sustained.

**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.