

Award No. 14268
Docket No. TE-13517

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

Regular Operator, G. A. Callahan be allowed a 3-hour call for not being called and used on July 19, 1960, to copy train order placed at closed Block Station "Jackson." Instead, Trainmen were permitted to copy the train order — Violation of the Scope.

EMPLOYES' STATEMENT OF FACTS: The facts are fairly disclosed in the following correspondence exchanged between District Chairman V. F. Lagonia (Emporium, Pa.) and Superintendent of Personnel G. F. Daniels (Buffalo, New York); and General Chairman A. Swilling (Philadelphia) and Manager, Labor Relations, Herman Kendall (Philadelphia):

**DISTRICT CHAIRMAN LAGONIA TO SUPERINTENDENT
DANIELS, SEPTEMBER 19, 1960**

"At our regular monthly meeting to be held in Buffalo, New York, on October 6, 1960, I wish to discuss the following claim:

'Claim of the General Committee of the Order of Railroad Telegraphers that Regular Operator G. A. Callahan be allowed a 3 hour call for not being called and used on July 19, 1960 to copy train order placed at closed Block Station "Jackson". Instead, Trainmen were permitted to copy the train Order — Violation of the Scope Rule.'

DANIELS TO LAGONIA, OCTOBER 20, 1960

"In reference to the following subject discussed at regular monthly meeting held in Buffalo, New York, on October 7, 1960:

On April 3, 1942, "Jackson" was established as a block station. Effective January 13, 1950, this block station was closed.

By time card dated July 19, 1960, Claimant requested payment of three hours "account Order No. 340 phoned to Jackson." This claim was denied.

Under date of September 19, 1960, the District Chairman, Order of Railroad Telegraphers, presented a claim, in the same form as that quoted at the beginning of this Submission, to the Superintendent, Personnel, Northern Region, who denied it by letter of October 20, 1960. Subsequently, at the request of the District Chairman, a Joint Submission covering the matter was prepared, a copy of which is attached as Exhibit A.

At a meeting on July 7, 1961, the General Chairman presented the claim to the Manager, Labor Relations, the highest officer of the Carrier designated to handle such disputes on the property. The Manager, Labor Relations denied the claim by letter of July 27, 1961, pointing out, in part, that:

"While it is a matter of record that the Track Car Driver copied Train Order 340 at Jackson, Pa., the file indicates it was only for the use of track for the movement of his own track car between two points. This being the case, a train order was not necessary. The Book of Rules for Conducting Transportation (Rule 80), permits track car extras to run by verbal permission of Operator in charge, without necessity of train orders.

Furthermore, in Arbitration Award 153 of December 12, 1951, the Chairman stated it was his opinion that, 'This rule is not intended to prohibit or limit any of the practices not explicitly described therein, including movements on secondary tracks, and the methods of facilitating the movement of track cars or any of the types of work trains.'

The copying of the train order being for the benefit of the Track Car Driver and for the sole purpose of facilitating the movement of his own track car, claim is without merit.

In addition to the claim being without merit, Claimant was not available for service at 9:26 A. M., July 19, 1960, had Management required an Operator. This being due to the fact Claimant had worked until 7:00 A. M. this date and had been off duty only two hours and twenty-six minutes prior to the alleged violation.

In view of the foregoing, claim is denied."

Therefore, so far as Carrier is able to anticipate the basis of this claim, the questions to be decided by your Honorable Board are whether the copying of a train order by the track car driver at Jackson on July 19, 1960, violated the scope of the Telegraphers' Rules Agreement, and whether the Claimant is entitled to the compensation claimed.

OPINION OF BOARD: The Organization argues that the facts in this case are the same as those presented in Award 13314. We believe there is a distinguishing factor involved in these two cases which serves to prohibit us from following that award in this instance.

Award 13314 involved Train and Engine Service employes as contemplated by Arbitration Award 153. The instant case involves a Track Car driver. A new rule was promulgated by the arbitration award and only those claims which fall under the language of that award should be sustained by this Board. The award said:

"For the sake of clarity, however, it should be stated that this rule is not intended to prohibit or limit any of the practices not explicitly described therein, including movements on secondary tracks, and the methods of facilitating the movement of track cars or any of the types of work trains."

We are of the opinion that the facts in the instant case do not bring the dispute within the limits of Arbitration Award No. 153. Therefore, the claim is denied.

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 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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1966.