



Award No. 14984

Docket No. TE-13732

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

GRAND TRUNK WESTERN RAILROAD COMPANY

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

1. Carrier is in violation of the Agreement between the parties, commencing on April 3, 1961, by requiring or permitting the conductor and engineer of Train No. 83, employes not covered by the Agreement, to, on each Monday, Wednesday and Friday, handle train orders to Grand Haven, Michigan, and there deliver to the crew of Train No. 84 on the following day (each Tuesday, Thursday and Saturday).

2. Carrier shall, beginning May 16, 1961, and continuing until the violation outlined above is corrected, for each Tuesday, Thursday and Saturday, compensate the senior extra employe available, in the amount of a day's pay of eight (8) hours. On such days that no extra employe is available, Carrier shall compensate regularly assigned employes on their rest days, M. E. Rawlings on Tuesdays, E. C. Shafer on Thursdays, and S. E. Bellgraph on Saturdays, each for eight (8) hours' pay at the time and one-half rate of their respective positions.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective November 1, 1955, as supplemented and amended, is available to your Board, and by this reference is made a part hereof.

This dispute arose out of Carrier's action of requiring or permitting the Conductor and Engineer of Train No. 83, employes not covered by the Agreement, to, on each Monday, Wednesday, and Friday, commencing on April 3, 1961, handle train orders from Grand Rapids to Grand Haven, Michigan, and there deliver to the crew of Train No. 84 on the following day (each Tuesday, Thursday and Saturday).

Shown below is a sampling of the train orders involved. In each instance an accompanying clearance (Carrier's Form B) is also handled by the Conductor and Engineer of Train No. 83 to be delivered to the crew of Train No. 84 the following day. The train orders are written in manifold

Dear Mr. Sanders:

This refers to exchange of correspondence and conferences dealing with the claim progressed on behalf of Extra Senior Available Telegrapher account train crew on Train No. 83 performing Telegraphers' work on Tuesdays, Thursdays and Saturdays commencing on May 16, 1961, and is a continuous violation.

This flagrancy of our Agreement is occurring on the Grand Rapids Subdivision by Train No. 83 operating between Grand Haven and Grand Rapids.

In your letter of November 21, 1961, you take the position because no Telegrapher is employed at Grand Haven this work could be performed by employees other than those covered by our Current Working Agreement. We cannot agree with this. Rule 15 only makes provisions for the handling of train orders at points where Telegraphers are employed. Rule 1, Scope, provides for members of our Craft performing this work.

In my letter to you of October 6th, 1961, I outlined our position in respect to Rule 30. At that time I also referred to the other provisions contained in your letter of October 3, 1961.

We cannot agree with the position taken in your letters of October 3 and November 21, 1961 and same is being appealed to higher authorities.

Yours very truly,

/s/ L. H. Freeman
General Chairman"

Copies of the November 1, 1955 Telegraphers' Working Agreement in effect on this property are on file with the Third Division.

(Exhibits not reproduced.)

OPINION OF BOARD: It is Claimant's contention that Carrier required or permitted the Conductor and Engineer of Train No. 83, employees not covered by the Telegraphers' Agreement to, on each Monday, Wednesday and Friday, commencing on April 3, 1961, handle train orders from Grand Rapids to Grand Haven, Michigan, and there deliver to the crew of Train No. 84 on the following day — Tuesday, Thursday and Saturday. Claimant contends that this practice was in violation of the rules of the Agreement, particularly Rule 1, the Scope Rule.

Carrier maintains that a train order is issued to cover the movement of Train No. 83 eastward between Grand Haven and Coopersville, an intermediate station; that there being no telegraphers employed at Grand Haven, the train orders governing the movement of Train No. 83 eastward, Grand Haven to Coopersville, are issued at Grand Rapids, Michigan to the crews assigned to crews 83 and 84 on the westward trip from Grand Haven; that these train orders were received, copied and delivered to the crew of Trains 83 and 84 by a telegrapher employed at Grand Rapids, each Monday, Wednesday and Friday, and were executed by the same crew westward from Grand Haven on Tuesday, Thursday and Saturday; that Claimants' contention that

the crews of Train 83 "handled" train orders at Grand Haven for delivery to the crew of Train 84 for execution the following day is a fallacy; it is the further contention of the Carrier that the Scope Rule is inapplicable to the situation presented here and that Rule 17 of the Agreement is the controlling rule; it is Carrier's further position that Claimants' claim is barred by Article V, as the claimants are unnamed and not readily identifiable as required by said article.

Before entering into a discussion on the merits of this Claim, we must dispose of the objection Carrier has made to a consideration of it, on the ground that it is in violation of Article V, with regard to "unnamed claimants"; a claim is valid if the identity of the Claimant can be easily ascertained and he is readily identifiable, even though such claimant is not specifically named. It is quite significant that during the progress of this claim on the property, in a letter to the District Chairman from the Superintendent, in commenting on the claim of a named claimant, he made the following observation: "It would be my opinion that he would be an improper claimant inasmuch as there were other Telegraphers available and not assigned through the period of the claim."

In a prior award on this property, Award 9956 (LaDriere), where a similar objection was made, the following language contained in Award 9205 was cited:

"While not named, he was so described that he could readily be identified by Carrier from its roster without further evidence. . . . We believe the intent of the requirement was complied with."

We believe Award 9956 to be a precedent on this property and supports Claimant's contention that the claim in the instant case should not be barred.

Getting to the merits of this Claim, if we construe the facts to be that the Conductor and Engineer of Train 83 delivered and handled the train orders to the crew of Train 84, we are confronted with a discussion of the Scope Rule. (We must bear in mind that there was no telegrapher stationed at Grand Haven.) There is a precedent on this property that the Claimant's right to the work which they contend belonged to them must be resolved from a consideration of tradition, history and custom; and, that on that issue the burden of proof rests upon the employees. See Award 8129 (Smith), Award 9502 (Elkouri), Award 9953 (LaDriere), Award 9956 (LaDriere). There is an absence of any such proof in this record.

Further, in Award 8012 (Cluster), it is stated:

"We can see no attempted or actual encroachment in the particular case before us, where the train order in question was executed by the same employe to whom it was delivered by a telegrapher . . . and where no telegrapher was on duty at Salmon Falls, at which point the order was actually executed . . . that to hold that the engineer here transported the order from Machias to Salmon Falls and delivered it to himself at the latter place would be 'to set up a fiction', to assume 'a most involved and anomalous situation and relationship' and 'indulge in a hypothesis' contrary to fact."

It appears that the facts in that award are quite analogous to those in the instant case. See also Award 13920 (Engelstein), Award 14052 (Dorsey).

For the reasons set forth in this opinion, the Claim herein must be 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 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 Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December 1966.