Award No. 15548
Docket No. TE-13811

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, 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 December 30, 1961, and January 21, 1962, it required or permitted Trainmaster Robert Dowdy and Assistant Superintendent W. P. Beesley, employes not covered by said Agreement, to perform the work of a telegrapher in the handling of train orders at Peru Yard, Peru, Indiana.

2. Carrier shall, because of the violation set out in paragraph 1 hereof, compensate available extra telegraphers and/or regularly assigned employes at Peru, Indiana, idle on their respective rest day or days, a day's pay — eight (8) hours at $2.41 per hour.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto, effective September 1, 1955 and as otherwise amended. Copies of said Agreement are on file with your Honorable Board and are, by reference thereto, made a part hereof.

Rule 27 of said 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, for your ready reference, reads:

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 said Agreement are listed positions existing at Peru Junction on the effective date of this Agreement. This listing reads:

"WABASH RAILROAD COMPANY

TRAIN ORDER NO. 44

From Peru Jan. 21, 1962

To C&E No. 4 and Extra 481 East At Peru

Extra 481 East run ahead of No. 4 Eng. 493 Peru to Hartman

No. 4 Eng. 493 run 10 mins. late Hartman to Andrews Yard

WHP C.T.D.

Complete Time 3:01 P. M. Brehmer OPR."

Mr. Brehmer was allowed eight (8) hours at straight-time rate (his regular allowance) for the work he performed from 3:00 P. M. to 11:00 P. M. on Sunday, January 21, 1962.

Assistant Superintendent W. P. Beesley used his automobile to take copies of Train Order No. 44 to the engineer and conductor of Train Extra East, Engine 481, at 3:25 P. M. and 3:28 P. M., respectively, while the train was still standing in Peru Yard at their initial terminal.

Copy of all correspondence had between the representatives of the parties is attached hereto and made a part hereof, marked Carrier's Exhibit A.

(Exhibits not reproduced.)

OPINION OF BOARD: On December 30, 1961, Train Order Nos. 36 and 37 for Train Extra East, Engine 465 were received at the telegrapher office at the passenger station at Peru, Indiana, where they were copied by Telegrapher J. A. Bolner. The train proceeded to the east end of Peru Yard, known as Peru Junction, located 2.3 miles from the depot, at which location these orders were delivered to the conductor and engineer of the train by Trainmaster Robert Dowdy, an employe not covered by the Telegraphers' Agreemnt. On January 21, 1962, Train Order No. 44 was delivered to conductors and engineers of Train No. 4 and Extra East Engine No. 481 by Assistant Superintendent, W. P. Beesley, also an employe not covered by the Telegraphers' Agreement. The telegrapher position at Peru Junction had been discontinued for a number of years.

The Brotherhood makes claim that Carrier violated the Agreement, particularly Rule 1(c) when it permitted a trainmaster and assistant superintendent to deliver train orders. It contends that this action deprived employes covered by the Agreement of work which belongs to them. It asserts that the employes on whose behalf claim is made are entitled to a day's pay for each date of violation of the Agreement under Rule 3.

In the denial Carrier states that the telegraphers who copied the train orders were on duty at the passenger station at Peru, Indiana, at the time of the occurrences for which claim was made and, hence, did not suffer loss of pay. Carrier also maintains that the telegrapher on duty actually handled the train orders except for the physical delivery to the train crew, which was merely an accommodation to the telegrapher on duty.

The pertinent rule in this dispute is 1(c), which reads as follows:

"(c) No employe other than those (not including non-telegraph agents or exclusive levermen) covered by this agreement and train dispatchers will be permitted to handle train orders except that in an emergency conductors may copy a train order from the train dispatcher, and if there be a telegrapher employed at the point where the conductor copied the train order he (the telegrapher) will be paid a call (three (3) hours at pro rata hourly rate). If there is no telegrapher employed at the point where the conductor copied the train order the telegrapher employed at the nearest station will be paid a call (three (3) hours at pro rata hourly rate)."

Since the record does not indicate that an emergency existed, this rule requires that only employes covered by the Agreement and train dispatchers be permitted to handle train orders. The handling of train orders includes the receiving, copying, and delivering of these messages to the crews addressed. The record shows that the trainmaster and assistant superintendent delivered train orders to train crews at Peru Yard. Since they handled train orders, they performed the work of a telegrapher, in violation of Rule 1(c). Our findings are consistent with Award Nos. 12852, 12921 and 13360.

Compensation is allowed in accordance with the provisions of Rule 1(c) and, accordingly, payment for December 30, 1961 and January 21, 1962, shall be on a call basis.

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 violated.

AWARD

Claim sustained for a call for each date of claim in accordance with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of May 1967.

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