

Award No. 15914
Docket No. TE-14261

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

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

1. Carrier violated the terms of the Telegraphers' Agreement when at 8:29 P.M., Friday, October 20, 1961, 8:03 P.M., Friday, November 3, 1961, 7:59 P.M., Thursday, November 9, 1961, 8:11 P.M., Friday, November 17, 1961 and 8:15 P.M., Thursday, December 7, 1961, it caused, required or permitted Engineer Adams—Train No. 20, Engineer Eskew—Train No. 20, Engineer Eskew—Train 20, Engineer Adams—Train No. 20, and Engineer Rentz—Train 20 respectively, employes not covered by The Telegraphers' Agreement, to receive, via radio-telephone, verbal train order instructions while at Duluth, Chamblee and Norcross, Georgia, respectively.

2. Carrier shall now compensate Mr. R. L. Puckett, Agent-Telegrapher, Duluth, Georgia, for one call October 20, 1961; Mr. J. W. Parker, Clerk-Telegrapher, Chamblee, Georgia, for one call each date — Friday, November 3rd, Thursday, November 9th and Friday, November 17, 1961; and Mr. W. L. Meeks, Agent-Telegrapher, Norcross, Georgia, for one call, Thursday, December 7, 1961.

EMPLOYEES' STATEMENT OF FACTS: Train No. 20 is a first class northbound freight train operating between Inman Yard in Atlanta and Greenville, South Carolina. It is shown in Time Table No. 56, which became effective October 29, 1961, as follows:

Miles from Wash'n	Sta. Nos.	Stations	20 Daily P.M.
		BOT Ar.	
484.1	484	W.GREENVILLE ...N	10 45
489.3CROSSWELLP	...
493.6HAYWOODP	10 25
495.8	496	...EASLEYP	...

telephone offices where an operator is employe and is available or can be promptly located, except in emergency, in which case the operator will be so advised by the Chief Dispatcher and will be paid for the call. At offices where two or more shifts are worked, the operator whose tour of duty is nearest the time such orders were handled will be entitled to the call.

NOTE: See letter of October 19, 1929, on page 42, relative to use of telephones by conductors."

OPINION OF BOARD: The Petitioner alleges that Train and Engine Service employes received "Verbal train orders" at points where telegraphers were employed. These "verbal train orders" were transmitted via radio-telephone by the Train Dispatcher to an employe other than a telegrapher. Petitioner therefore contends that these transmissions or instructions were violative of the standard train order rule, Rule 31, of the Agreement. Rule 31 reads:

"RULE 31.

HANDLING TRAIN ORDERS

No employe other than covered by this agreement and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in emergency, in which case the operator will be so advised by the Chief Dispatcher and will be paid for the call. At offices where two or more shifts are worked, the operator whose tour of duty is nearest the time such orders were handled will be entitled to the call."

The principal question to be resolved in this case is whether the so-called "verbal train orders" constituted "train orders" as envisioned in the above cited rule. Carrier arguendo, states that there are no "verbal train orders" on its property; that train orders to be considered as such within the meaning of the Standard Train Order Rule, must first direct the movement of trains and then such direction must be made a matter of record.

An examination of the record reveals the messages transmitted by the Dispatcher to the train and engine service employes via radio-telephone were substantially as follows:

1. to run extra from Walters, mile post 600, to Haywood, mile post 493.6;
2. to run extra from Foremost, mile post 630.9 to Greenville, mile post 484.

Other messages involved in this case are substantially the same as these. Both parties agree that these messages were not copied and hence were not made a matter of record.

It is our judgment that the messages in question were train orders coming within the purview of Rule 31. Although there was no record made of these messages, they did direct the movement of trains. We find, therefore, that the Carrier was in violation of Rule 31 insofar as all claims as submitted are concerned.

On November 3, 9, and 17, 1961, at Chamblee, inasmuch as the claimant was on duty and under pay, we shall award him nominal damages of \$1.00. To allow the claim as submitted in these instances would be tantamount to imposing a penalty. We have found in many other awards that this Board lacks authority to do so. Claims on October 20 and December 7, 1961 at Duluth and Norcross shall be paid as submitted to those claimants who were off duty at the time the orders were issued.

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 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 been violated.

AWARD

Claims sustained consistent with the Opinion as expressed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1967.