



Award No. 16823
Docket No. TE-14956

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, 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 Telegraphers' Agreement as is herein set forth in violations 1 through 24, when they required or permitted employes not covered by the Telegraphers' Agreement, by using the Carrier's telephone, to transmit and receive communications of record at East Durham, North Carolina, performing communication work that belongs exclusively to employes covered by the Telegraphers' Agreement.

Violation No. 1. Assistant Agent Terrill, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina, 7:25 A. M. 8-29-62. "No. 67 on duty 4:45 P. M. out 5:05 P. M. with 3-2-266 tons, arrived with 2-11-351 tons, handled 7-13-739 tons, arrived at 10:05 P. M., off duty 10:25 P. M. Signature L. Duvall, Conductor." East Durham engine report. 1 car handled. 1 engine Tuesday, August 29, 1961, 2 hours, 10 minutes overtime, 197 cars handled. Overtime due to industrial switching and heavy sand from connection. Signature J. G. M. 9:40 A. M. — Assistant Agent Terrill to Dispatcher at Greensboro, North Carolina "Calling No. 68 for 10:10 A. M. to leave 10:40 A. M."

Violation No. 2. 8-30-62. Assistant Agent Terrill, East Durham, North Carolina, 7:09 A. M. to Dispatcher at Greensboro, North Carolina No. 67 engine 2105 Engineer Millstead on duty 5:00 P. M. out 5:30 P. M. with 3-1-247 tons, arrived with 3-11-372 tons, handled 7-19-903 tons, arrived at 10:15 P. M., off duty 10:35 P. M. Signature W. Duvall, Conductor. Durham engine report: 1 engine Wednesday, August 29, 1962, 1 hour, 20 minutes' overtime.

238 cars handled. 1 engine, Wednesday, August 30, 1961, 2 hours, 20 minutes' overtime, 241 cars handled. Overtime due to heavy set off and heavy delivery sand from connection.

9:57 A. M. Assistant Agent Terrill, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina. Calling No. 68 for 10:45 A. M. to leave 11:15 A. M. with 8-5-664 tons.

10:10 A. M. Assistant Agent Terrill, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina. No. 64 pulled at 10:10 A. M.

Violation No. 3, 8-31-62. Assistant Agent Terrill, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina, 7:55 A. M. No. 67 engine 2105 Engineer Knight on duty 5:00 P. M., out 5:30 P. M. with 2-3-188 tons, arrived with 1-6-215 tons, handled 3-12-474 tons. Arrived at 10:05 P. M., off duty 10:25 P. M. Signature L. Duvall, Conductor.

Assistant Agent Terrill, East Durham, North Carolina to the Dispatcher at Greensboro, North Carolina, 7:55 A. M. 1 engine August 30, 1962, 2 hours, 45 minutes' overtime, 256 cars handled. 1 engine August 31, 1961, 2 hours, 30 minutes' overtime, 233 cars handled. No engine failure, overtime due 25 minutes late arrival No. 64, 25 minutes industrial switching, 1 hour, 25 minutes heavy delivery of sand from connection.

8:07 A. M. No. 82 leaving East Durham yard now.

10:31 A. M. No. 64 left east end of yard at 10:10 A. M.

Violation No. 4, 9-4-62. Agent Murray at East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

7:45 A. M. No. 67 engine 6211, Engineer Duvall, Conductor Millstead, on duty 7:00 P. M., out 8:00 P. M. with 5-2-371 tons, arrived 1:00 A. M., off duty 1:20 A. M., with 6-1-279 tons. Handled 11-13-650 tons. Durham engine report: Monday, September 3, 1962, 1 engine, no overtime, 127 cars handled. Monday, September 4, 1961, 1 engine, 2 hours, 30 minutes overtime, 215 cars handled.

Violation No. 5, 9-5-62. Agent Murray at East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

7:10 A. M. No. 67, Duvall and Knight, on duty 4:45 P. M., left 5:00 P. M. with 2-2-175 tons, arrived 10:10 P. M., off 10:40 P. M. with 5-9-420 tons. Handled 9-11-126 tons. Durham engine report: 1 engine Tuesday, September 4, 1962, 35 minutes' overtime, 164 cars handled. 1 engine Tuesday, September 5, 1961, 15 minutes' overtime, 142 cars handled. Overtime due to cigarettes from Liggett Myers.

Violation No. 6, 9-6-62. Agency Murray, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

7:48 A. M. No. 62 coming to West Durham now. He wants to know on the radio if you want him to stay ahead of No. 16. Dispatcher: Tell him No. 16 is on time.

8:17 A. M. No. 62 leaving at 8:17 A. M., can he get by the Seaboard at Cary? Dispatcher: Greensboro to Seaboard Dispatcher at Raleigh: No. 62 will be at Cary at 8:45 A. M., can they get through? Seaboard Dispatcher: Come on through. Agent Murray: I will tell them on the radio.

10:55 A. M. No. 68 will have 7-2-371 tons. Will get out at 11:00 A. M.

Violation No. 7, 9-7-62. Agent Murray, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

7:11 A. M. No. 65 said on the radio to tell you he was coming in to the east end of Durham yard now.

Dispatcher to Agent Murray at 7:47 A. M.: Has No. 65 left?

Agent Murray to Dispatcher: Yes, I just heard him say he was passing the 52 mile post at 7:45 A. M. He left the yard at 7:40 A. M.

Dispatcher at Greensboro to Clerk Tindall at East Durham, North Carolina, 9:37 A. M.: Has No. 64 gone? Clerk Tindall: Yes, No. 64 arrived 9:05 A. M., and left 9:25 A. M. Agent Murray to Dispatcher at Greensboro, North Carolina, and telegraph operator at Pomona, North Carolina on Dispatcher's telephone at 6:18 P. M.: No. 83's out of Raleigh 56-4413918. By Durham 67-54-4642 tons. By Pomona 13-17-1178 tons. Agent Murray to Telegraph Operator at Selma, North Carolina: 6:22 P. M. here are some messages, No. 82 nothing. No. 64 pick up east end of No. 1 track 2-0-123 tons for Selma. No. 65 pick up track No. 3 3-2-225 tons, 0-2-46 tons by Glenn. Signature Murray.

Violation No. 8, 9-10-62. Agent Murray, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

8:42 A. M. No. 64 arrived 8:35 A. M. No. 67 engine 6877, Duvall and Knight, on duty 6:00 P. M. left 6:30 P. M. with 4-8-495 tons. Arrived 10:45 P. M., off 11:05 P. M. with 1-0-59 tons, handled 5-10-601 tons.

Violation No. 9, 9-11-62. Agent Murray at East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

7:17 A. M. 1 engine Monday, September 10, 1962, 1 hour, 10 minutes' overtime, 121 cars handled. 1 engine Monday, September 11, 1961, 50 minutes' overtime, 125 cars handled. Overtime due to waiting on three cars cigarettes from L&M. 9:42 A. M.: No. 68 engine 6877, called for 9:55 A. M., with 3-17-660 tons. No. 64 arrived 8:45 A. M., left 9:05 A. M., picked up 12-1-551 tons. 20 minutes' delay on No. 54 waiting on tobacco cars.

Violation No. 10, 9-12-62. Dispatcher, Greensboro, North Carolina, to agent Murray at East Durham, North Carolina.

7:59 A. M.: Has No. 65 gone? Agent Murray: No. 65 left at 7:50 A. M. No. 16 was clearing him at the passenger station a few

minutes ago. Should be a perfect meet. Agent Murray, East Durham, North Carolina, to Dispatcher at Greensboro, North Carolina 10:02 A. M.: No. 68 out at 10:00 A. M., No. 64 left at 9:50 A. M.

Violation No. 11, 9-13-62. Agent Murray at East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

11:45 A. M. No. 68 called on duty at 11:45 A. M. with 3-1-116 tons.

Violation No. 12, 9-17-62. Agent Murray at East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

10:25 A. M. No. 68 on duty 9:45 A. M., left 10:00 A. M. with 7-4-797 tons. The Carrier also violated the Telegraphers' Agreement when on the same date, September 17, 1962, it allowed, required or permitted Conductor Campbell, an employe not covered by said Telegraphers' Agreement, to come on the telephone and handle (receive, copy and/or deliver) train orders numbers 711 and 715 as follows:

"FORM 19	SOUTHERN RAILWAY SYSTEM	FORM 19
-------------	-------------------------	------------

TRAIN ORDER NO. 711	DATE: Sept. 17, 1962
TO: C&E Extra 133 East	AT: East Durham, N. C.

Order number 705 is annulled.

RTW, Chief Dispatcher.

Made Complete: Time 9:50 AM John Campbell, Opr."

"FORM 19		FORM 19
-------------	--	------------

TRAIN ORDER NO. 715	DATE: Sept. 17, 1962
TO: C&E Extra 133	AT: East Durham, N. C.

Order No. 701 is annulled.

RTW, Chief Dispatcher

Made Complete: Time 10:19 AM John Campbell, Opr."

Violation No. 13, 9-19-62. Agent Murray, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

7:16 A. M. No. 82 arrived 7:10 A. M., left 7:16 A. M. No. 67 engine 6222 Duvall and Knight, on duty 7:40 P. M., left 8:00 P. M. with 6-3-454 tons. Arrived 12:30 A. M., off 12:50 A. M. with 2-4-287 tons, handled 6-9-595 tons. 7:48 A. M.: Sperry car 133 just departed East. Engine report: 1 engine Tuesday, September 18, 1962, 4 hours', 25 minutes' overtime, 225 (225) cars handled. 1 engine Tuesday, September 19, 1961, 3 hours', 15 minutes' overtime, 204 cars handled.

Overtime due to late arrival of all trains and heavy delivery of sand from connection. 8:30 A. M.: No. 16 just by East Durham. 11:34 A. M.: 12:05 P. M.: No. 68 on duty 12:15 P. M. with 4-0-178 tons. No. 64 left East Durham 12:05 P. M.

Violation No. 14, 9-20-62. Agent Murray, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

7:10 A. M.: No. 67 engine 6222, Duvall and Knight, on duty 7:30 P. M., left 7:55 P. M. with 6-10-63 tons. Arrived 12:45 A. M., off 1:10 A. M. with 7-9-516 tons, handled 13-20-1143 tons.

Violation No. 15, 9-21-62. Agent Murray, East Durham, North Carolina, to the dispatcher at Greensboro, North Carolina.

7:42 A. M.: No. 82 just arrived East Durham. No. 67, engine 2031 Duvall and Knight, on duty 9:40 P. M., left 10:10 P. M. with 3-1-183 tons, arrived 1:35 A. M., off 1:55 A. M. with 0-2-47 tons, handled 3-3-230 tons. 10:45 A. M.: No. 68 engine 2031 on duty 10:45 A. M. with 7-9-257 tons should be pulling in a few minutes.

Violation No. 16, 9-25-62. Agent Murray, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

7:50 A. M.: No. 67 engine 9, Duvall and Millstead, on duty 7:00 P. M. left 7:50 P. M. with 3-10-437 tons, arrived 12:20 A. M., off 12:40 A. M. with 2-3-144 tons, handled 7-14-718 tons. Engine report: 1 engine Monday, September 24, 1962, 2 hours', 20 minutes' overtime, 177 cars handled. 1 engine Monday, September 25, 1962, 45 minutes' overtime, 101 cars handled. Overtime due to late arrival No. 64, heavy delivery said from connection, heavy industrial switching.

The Carrier also violated the Telegraphers' Agreement when on the same date, September 25, 1962, it allowed, required or permitted Conductor Brandt, an employe not covered by said Telegraphers' Agreement, to come on the telephone and handle (receive, copy and/or deliver) train order No. 707 as follows:

"FORM
19

FORM
19

TRAIN ORDER NO. 707

DATE: Sept. 25, 1962

TO: C&E No. 64 at East Durham

AT: Hillsboro, N. C.

Order Number 705 is annulled. No. 60 sixty four engine 6880 take siding meet No. 65 sixty five engine 2052 at Clegg.

RTN, Chief Dispatcher.

Made Complete

Time 7:27 AM

Roberts, Opr."

Violation No. 17, 9-26-62. Agent Murray, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

7:56 A. M.: No. 67 engine 6235, Duvall and Knight, on duty 6:00 P. M., out 6:50 P. M. with 4-8-408 tons, arrived 12:05 A. M. off

12:25 A. M. with 5-7-375 tons, handled 11-16-1022 tons. 8:42 A. M.: No. 65 arrived 8:20 A. M. pulling now. No. 82 coming by West Durham now. Engine report: 1 engine Tuesday, September 25, 1962, 2 hours', 10 minutes' overtime, 217 cars handled. 1 engine Tuesday September 26, 1961, 1 hour, 30 minutes' overtime, 180 cars handled. Overtime as follows: 30 minutes extra trip to N&W connection with rush cars other overtime due to sand from connection. 9:48 A. M.: No. 82 left East Durham 9:35 A. M.

Violation No. 18, 9-27-62. Agent Murray, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

7:09 A. M.: No. 67 engine 6235, Duvall and Millstead, on duty 9:00 P. M. left 9:45 P. M. with 1-23-559 tons, arrived 2:35 A. M. off duty 2:55 A. M. with 106-180 tons. Agent Murray to Chief Dispatcher at Greensboro, North Carolina. 7:25 A. M.: Engine report: 1 engine Wednesday, September 26, 1962, 4 hours', 25 minutes' overtime, 312 cars handled. Overtime due to heavy set off and 1 hour, 30 minutes handling cars to West Durham, also late arrival No. 64, industrial switching and heavy sand from connection.

Violation No. 19, 9-28-62. Agent Murray, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

8:21 A. M.: No. 67 engine 6235, Duvall and Millstead on duty 9:00 P. M. left 9:15 P. M. with 1-5-191 tons, arrived 1:10 A. M. off 1:30 A. M. with 1-5-191 tons, handled 8-10-616 tons. 12:10 P. M.: No. 32 left the yard at 12:05 P. M.

Violation No. 20, 10-1-62. Agent Murray, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

10:00 A. M.: No. 68 out at 10:00 A. M. with 4-10-465 tons.

Violation No. 21, 10-2-62. Agent Murray, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

7:05 A. M.: No. 67 engine 6881, Duvall and Millstead, on duty 6:30 P. M., out 7:05 P. M.: with 9-10-761 tons, arrived 12:30 A. M. off 12:50 A. M. with 1-6-175 tons, handled 12-16-1008 tons. Engine report: 1 engine Monday, October 1, 1962, 40 minutes' overtime, 103 cars handled. 1 engine Monday, October 2, 1961, 1 hour overtime, 91 cars handled. Overtime due to late arrival No. 64. 8:00 A. M.: No. 64 arrived 7:55 A. M. setting off and picking up, will leave about 8:20 A. M.

Violation No. 22, 10-3-62. Agent Murray, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

8:05 A. M.: No. 64 arrived 8:00 A. M. Engine report: 1 engine Tuesday, October 2, 1962, 1 hour, 40 minutes' overtime, 219 cars handled. 1 engine Tuesday, October 3, 1961, 1 hour, 55 minutes' overtime, 157 cars handled. Overtime due to industrial switching and heavy delivery sand from connection.

Violation No. 23, 10-4-62. Agent Murray, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

7:03 A. M.: No. 67, Duvall and Millstead, on duty 8:00 P. M. left 10:55 P. M. with 7-1-423 tons, arrived 4:15 A. M. off 4:35 A. M. with 1-8-242 tons, handled 8-9-683 tons. Engine report: 1 engine Wednesday, October 3, 1962, 2 hours', 45 minutes' overtime, 256 cars handled. 1 engine Wednesday, October 4, 1961, 3 hours', 15 minutes' overtime, 224 cars handled. Overtime 1 hour taking 27 cars to West Durham, heavy set off and industrial switching. 7:13 A. M.: No. 62 just passing East Durham yard office. Dispatcher to Agent Murray: Let me know when No. 62 pulls. 7:22 A. M.: No. 62 arrived 7:14 A. M. left 7:22 A. M. 12:36 P. M.: No. 68 on duty 12:35 P. M. with E-1-383 tons.

Violation No. 24, 10-5-62. Agent Murray, East Durham, North Carolina, to the Dispatcher at Greensboro, North Carolina.

6:55 A. M.: No. 67 engine 2054 on duty 9:30 P. M. left 11:25 P. M. with 2-11-363 tons, arrived 4:30 A. M. off 4:50 A. M. with 6-5-410 tons, handled 11-164-964 tons. Engine report: 1 engine Thursday, October 4, 1962, 1 hour, 25 minutes' overtime, 214 cars handled. 1 engine Thursday, October 5, 1961, 2 hours', 45 minutes' overtime, 226 cars handled. Overtime due to sand from connection, switching and industrial switching. 8:24 A. M.: No. 82 out at 8:24 A. M. 10:31 A. M.: No. 65 arrived 10:20 A. M., picking up and engine now, then has to make his pickup. No. 64 coming by uptown Durham now.

11:48 A. M. Dispatcher at Greensboro, North Carolina to Agent Murray, East Durham, North Carolina. Is No. 65 moving yet? Agent Murray: Yes, No. 65 leaving at 10:48 A. M. 12:37 P. M.: No. 68 on duty 12:50 P. M. with 3-7-258 tons, will be out at 1:05 P. M.

The Carrier also violated the Telegraphers' Agreement when on the same date, October 5, 1962, it allowed, required or permitted Conductor Welleford, an employe not covered by said Telegraphers' Agreement, to come on the telephone and handle (receive, copy and/or deliver) train order number 707 as follows:

"FORM 31	SOUTHERN RAILWAY SYSTEM	FORM 31
-------------	-------------------------	------------

TRAIN ORDER NO. 707 DATE: October 5, 1962

TO: C&E No. 82. AT: East Durham, N. C.

No. 82 eighty two engine 6881 meet No. 65 sixty-five engine 6880 at Raleigh Tower.

Repeated at 7:51 A. M. RTN, Chief Dispatcher.
Welleford, Operator

Conductor or Engineman: Welleford, Conductor Train: 82

Made Complete Time: 7:51 AM Operator: Welleford, Condr."

EMPLOYEES' STATEMENT OF FACTS: Prior to March 1961 there was in operation at East Durham, North Carolina, a telegraph office which

(c) Except as provided in Rule 16, extra employes called for relief service shall be paid not less than eight hours at rate applicable to position filled."

"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.

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

"RULE 44.

TERMS OF AGREEMENT

This agreement supersedes and cancels all former agreements, but does not, except where rules are changed, alter former accepted and agreed to practices, working conditions or interpretations.

This agreement is revised as of September 1, 1949 and shall continue in effect until thirty (30) days' written notice is given by either party to the other of desire to revise or modify in accordance with the provisions of the Railway Labor Act."

(Exhibits not reproduced.)

OPINION OF BOARD: There were no telegraphers employed at Durham or at East Durham, North Carolina, on the dates of the alleged violations. Of the numerous violations alleged in the claim, four of same occurred, if at all, at East Durham, and the balance will be considered as having occurred at Durham, based upon our consideration of the record.

The basic issues presented in this case were before this Board in Award No. 16821, a controversy between the identical parties. We adopt the opinion in said award as controlling in this case regarding all alleged violations, except the alleged violations which occurred at East Durham on September 17, September 25, and October 5, 1962 which involve the handling of train orders.

Rule 31 of the Agreement between the parties expresses their intent regarding the handling of train orders. This work is expressly and exclusively reserved to employes of the telegraphers' class or craft " * * * where an operator is employed and is available or can be promptly located * * *." As of

March 8, 1961, the position of telegrapher-leverman was abolished at East Durham, North Carolina. It is not disputed that the train orders in question would have been handled by a telegrapher, but for the fact of abolishment of the position approximately sixteen months prior to the alleged violations. Rule 31 unquestionably offers Claimants no relief in this case. It served to preempt the work in question, so long as telegraphers were employed at East Durham. Nor do we find occasion here to apply the Scope Rule. Such pre-emption, in our opinion, cannot serve as the foundation upon which to establish and evidence custom, tradition and practice on the property. Otherwise, the position could never be abolished, regardless of its utility under the circumstances.

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 Employee involved in this dispute are respectively Carrier and Employee 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 19th day of December, 1968.