



Award No. 17230

Docket No. TE-16432

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

THE KANSAS CITY SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Kansas City Southern Railroad, that:

1. Carrier violated Rules 1-1 (Scope Rule) and 1-3 (Train Order Rule), and continues to violate almost daily when it requires and/or permits employees not covered under our Scope Rule to handle train orders by delivering same to the Sun, Texas switch engine at Beaumont, Texas, and/or other switch engines in that vicinity, even though there are telegraphers on duty and others available if necessary to be called. This claim retroactive to March 28, 1965, and will cover dates between that date and May 10, 1965.
2. Carrier shall compensate the oldest available telegrapher, extra in preference, for a call of two hours, at the penalty rate, of the rate for the CTC position at Beaumont, Texas, as prescribed by our Rule 8-5 (Call Rule) for each infraction of the above quoted rules, which sometimes covers one trick, sometimes two tricks, and sometimes even three tricks.
3. When there are infractions on one trick there shall be a claim for one call, so long as any and all calls are within the three hour period. Where infractions are on two tricks, there shall be claims for two calls, so long as the calls fall within the three hour limit for one operator should he be called, and where infractions are on three tricks, there shall be claims for three calls, so long as they fall within the three hours allotted an operator if called.
4. The Carrier shall arrange a joint check of the records to determine who the correct claimant is in each infraction.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between The Kansas City Southern Railway Company and this Union, dated January 1, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was presented and progressed in accordance with the time limits provided by the Agreement up to and including appeal and conference with the highest officer designated by the Carrier to receive appeals.

Having failed to reach a settlement, the Employees now appeal to your Honorable Board for adjudication.

This case turns on the proposition of whether or not the term, "handle train orders" as agreed to between the parties in the Train Order Article (1-3) includes delivery of such orders to the addressees.

Prior to May 1964, there was no reason for an intermediary to handle train orders in Carrier's Beaumont, Texas terminal. The Yard Office where engine crews went on duty and CTC Operators (telegraphers), were located in the same building. Train orders were delivered by the telegraphers directly to those to whom addressed. The delivery was hand to hand.

During the month of May 1964, the Yard Office was moved to Chaison Junction, a location within the Beaumont Terminal where no telegraphers are employed. Coincidental with the change in the location of the Yard Office, the point where engine crews report for duty was changed to Chaison Junction, a point so far removed from the CTC office that it was no longer expedient for engine crews to obtain their train orders directly from the CTC Operators. Instead, Clerks were instructed to secure the train orders from the CTC Operators, take them to Chaison Junction and deliver them directly to those to whom addressed or leave them where the engine crews could pick them up at their convenience.

There is no disagreement as to the facts, the dispute concerns the interpretation of the Agreement. Carrier takes the position that Chaison Junction being within the City Limits of Beaumont, Texas that no violation of the Telegraphers' Agreement exists. The Employees take the position that they are entitled to deliver train orders directly, (hand to hand) to those to whom addressed and claim compensation accordingly. This is a continuing claim.

TCU exhibits 1 through 8 are reproductions of the correspondence exchanged on the property in the handling of this claim. TCU exhibits 9 through 11 are statements from telegraphers employed in the CTC Office in Beaumont, refuting Carrier's assertion as to past practice.

(Exhibits not reproduced)

CARRIER'S STATEMENT OF FACTS: At Beaumont, Texas, around-the-clock telegraphers (CTC Operators) are employed at passenger station. Yard facilities are located at Chaison Junction, one-and-one-half miles south of the Beaumont Passenger Station. Telegraphers are not now and never have been employed at Chaison Junction. Yard crews go on and off duty at Chaison Junction; and while yard movements are confined to the Beaumont switching district ever since Chaison Junction was established in 1963, it has been the practice for the CTC operators at the passenger station to obtain information from train dispatcher concerning the location of first-class trains, which is relayed to Chaison Junction via messenger service for the convenience of the yard crews. No complaint or protest was made in regard to relaying of this information until the practice had been in effect for two years at which time the instant claim was presented.

(Exhibits not reproduced)

OPINION OF BOARD: The Organization relies on the specific rule involving "Train Orders" and rests its case upon the interpretation of said

Rule in this instance, Rule 1-3 of Article I, to be that the word "handle" in said Rule means actual "delivery", and it claims that under the fact situation in this dispute that Carrier violated said Rule when it permitted Clerks to pick up train order from telegraphers in Beaumont, Texas and deliver them to train crews at Chaison Junction.

The Organization contends that Rule 1-3 of the Agreement grants to Claimants the exclusive right not only to receive, and copy train orders, but also to deliver them. Rule 1-3 provides as follows:

"No Employee other than covered by this schedule 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 an emergency, in which case the telegrapher will be paid for the call."

The Carrier's defense to this claim is based upon the argument that Rule 1-3 is not applicable herein inasmuch as the facts are undisputed that there wasn't an assigned telegrapher at Chaison Junction where the communications were delivered, and therefore the said Rule 1-3 applies only to telegraph or telephone offices where a telegrapher is employed; that the communications delivered were not "train orders" but were messages on line ups to assist yard forces perform their duties; that, inasmuch as the Scope Rule is of the general type scope rule, the Petitioner failed to meet his burden of proving a system wide practice, custom and tradition of telegraphers, to the exclusion of others, delivering train orders to places where telegraphers are not employed.

The controlling issue to be determined therefore is whether or not Carrier violated Rule 1-3 of the Agreement.

The Organization urgently urges Award No. 12852 as in support of its position that Rule 1-3 was violated by Carrier in this instance. The Organization contends that the rule in said Award No. 12852 is similar to the Rule involved herein, and the facts therein are almost identical in that the telegraph office and the yard office were about two miles apart. The Board in that Award sustained the claim but the opinion is not specifically clear as to whether or not there were two separate offices of telegraphers and clerks at Stockton, California. This Board in Award No. 15795, in interpreting the Referee's Award in said Award No. 12852 stated: ". . . Rule 29(a) could be found applicable in Award 12852 only on the basis that the bounds of the telegraph office at Stockton included the yard office at that location." With this conclusion, we agree. Therefore, inasmuch as it is undisputed that a telegraph office or telegrapher was not employed at Chaison Junction, where the communications were delivered, then Award No. 12852 is not applicable herein in aiding us to decide this dispute.

Therefore it was incumbent upon the Organization to prove that an operator is employed or available at Chaison Junction, where the communications were in this instance, were delivered to the train crew, in order for Rule 1-3 to be violated.

In Award No. 9445, this Board, in interpreting a similar rule (3(d)) as here, said. ". . . Certainly we cannot strike from the rule the words "at Telegraph and Telephone offices where an operator is employed", etc., so as to hold that the rule applies to offices such as this, where no operator

is employed." Therefore, it is our conclusion that Carrier did not violate Rule 1-3 inasmuch as the record clearly shows that there was not an operator employed at Chaison Junction where the "communications" were delivered to the train crews.

Further, inasmuch as the Scope Rule is general in nature, this Board has repeatedly held that it was obligatory for the Organization to prove system-wide by history, custom and tradition that the work of delivery of train orders, has been exclusively reserved to telegraphers, and having failed to meet its burden, we must deny the claim.

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 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of June 1969.