

Award No. 18271

Docket No. TE-17781

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David L. Kabaker, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

ERIE-LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Erie-Lackawanna Railroad, that:

CLAIM NO. 1

Carrier violated the Agreement by causing, requiring and permitting conductors of various trains to handle (receive, copy and deliver) train orders at North Randall Ohio on May 30, 31, June 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, July 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, 1966 as listed in the initial statement of facts in claim submitted July 20, 1966.

CLAIM NO. 2

Carrier violated the Agreement by causing, requiring and permitting conductors of various trains to handle (receive, copy and deliver) train orders at North Randall, Ohio on July 27, 28, 29, and 31, 1966, as listed in the initial statement of facts in claim submitted September 6, 1966.

CLAIM NO. 3

Carrier violated the Agreement by causing, requiring and permitting conductors of various trains to handle (receive, copy and deliver) train orders at North Randall, Ohio on August 13, 14, 15, 16, 17, 19 and 20, 1966 as listed in the initial statement of facts in claim submitted to Carrier September 9, 1966.

CLAIM NO. 4

Carrier violated the Agreement by causing, requiring and permitting conductors of various trains to handle (receive, copy and deliver) train orders at North Randall, Ohio on August 6, 8, 9, 11 and 12, 1966 as listed in the initial statement of facts dated September 9, 1966.

CLAIM NO. 5

Carrier violated the Agreement by causing, requiring and permitting conductors of various trains to handle (receive, copy and deliver) train orders at North Randall, Ohio on August 1, 2, 3, 4 and 5, 1966, as listed in the initial statement of claim dated September 6, 1966.

CLAIM NO. 6

Carrier violated the Agreement by causing, requiring and permitting conductors of various trains to handle (receive, copy and deliver) train orders at North Randall, Ohio on July 22, 23, 24, 25 and 26, 1966.

Carrier shall, because of the violations listed in Claims 1 through 6, be required to compensate the agent-operator at North Randall, Ohio a three hour call at time and one-half rate of pay for each violation.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

An Agreement between the Erie Railroad Company and this Union, effective March 4, 1957, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

These claims were timely presented and progressed in accordance with the provisions of the Agreement, including conference with the highest officer designated by Carrier to receive appeals, and have been declined. The Employees therefore appeal to your Honorable Board for adjudication.

The cause of these claims arose at North Randall Yard, Ohio on Carrier's Cleveland Branch. This line extends from SN Junction (the connection with Carrier's main line) to Cleveland, Ohio. Mile Post 0 is located in Cleveland and SN Junction at Mile Post 49.6 near Warren, Ohio. Formerly double tracked, sections of this line have been reduced to single track. North Randall Yard is located on double track at the east end of one of these single track section. An agent-telegrapher is employed at North Randall Yard and during times when this employe is off duty conductors using way-side telephones are being required to copy train orders both at the station and at the switch where eastbound trains enter the main track, hence these claims.

(b) ISSUE

Employes not covered by the Telegraphers' Agreement being required to copy, receive and deliver train orders at locations where a telegrapher is employed.

(c) FACTS

In order that your Honorable Board may have an understanding of the physical characteristics of the Cleveland Branch at the time the train

1003. MAHONING DIVISION

STATION	MONDAY TO FRIDAY	SATURDAYS, SUNDAYS AND HOLIDAYS
North Randall, 1st Trick	8:00 AM to 12 Noon 1:00 PM to 5:00 PM	Closed
2nd Trick	8:00 PM to 12:01 AM 1:01 AM to 5:00 AM	Closed
Aurora	5:45 AM to 11:45 AM 12:45 PM to 3:45 PM	Closed

There has never been an operator employed at "CA" Cannon Road Crossover, Mile Post 14.0.

Claims were properly instituted, denied by the Superintendent and thereafter appealed to Carrier's highest designated officer by the General Chairman (Carrier Exhibits B-1 and B-2). Claims were discussed in conference on April 26 and May 19, 1967, at which time claims involving train orders issued to "SP", North Randall Station, were settled. (Carrier Exhibit C-1 through C-6). The remaining train orders which were issued to "CA", Cannon Road Crossover, were denied as evidenced by Carrier's Exhibits D-1 through D-6. All subsequent correspondence is identified by the following exhibits:

Carrier Exhibit "E" — General Chairman's letter dated January 27, 1968.

Carrier Exhibit "F" — Carrier's letter dated February 12, 1968.

Carrier Exhibit "G" — General Chairman's letter dated February, 17, 1968.

The Agent-Operator at North Randall is not a proper claimant in this dispute inasmuch as neither he nor any other telegrapher throughout Carrier's entire system have the demand right to handle train orders at locations where there is no telegraph or telephone office promptly located.

(Exhibits not reproduced.)

OPINION OF BOARD This case together with Award Nos. 18272, 18273, 18274 and 18275 were heard jointly by this Board and involve the same Parties and basically the same issue with minor variances. The dispute involves the handling of train orders by employees not covered by the Telegrapher's Agreement.

The Petitioner charges that violations of Rule 2 of the Agreement have occurred, which rule reads as follows:

"No employees 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 an emergency, in which case the telegrapher will be paid for the call as provided in Rule 9."

It is alleged by the Petitioner that the violative act of copying train orders took place at "C.A.", "Cannons" or "Cannon's Crossover" (All of which are the same but are frequently referred to by the above designations.) It is further contended by the Petitioner that "Cannons" is within the limits of the North Randall Yard. The Organization reasons that since North Randall is a location where a telegrapher is employed and further since "Cannons" is within the confines of North Randall, Rule 2 was, therefore, violated when train service employes copied train orders at a location where a telegrapher was employed.

Carrier contends no violation of Rule 2 occurred inasmuch as "Cannons" is not located within the area of North Randall but is outside the boundary of the North Randall Yard. In essence it concludes that since no telegrapher is employed at "Cannons", Rule 2 therefore would not prohibit the copying of train orders by employes not covered by the Agreement.

The issue to be decided by this Board therefore, becomes that of the resolution of a disputed fact, namely whether "Cannons" is located within the bounds of North Randall Yard.

The record does not reveal that "Cannons" and the North Randall Station are located within the boundaries of the same village, town or municipality. The record contains a drawing on Page 10 indicating that North Randall Yard is located at Mile Post 11.50 but does not reveal the exact location of "Cannons". In Award 18273 a similar diagram designates that "Cannons" is located at Mile Post 14.0. The Organization contends that a photograph of "Cannons", which is part of the record, establishes the location of "Cannons" within the confines of the North Randall Yard. The Board is of the opinion that the photograph referred to above does not establish the location of Cannon's Crossover. Further question is raised by Carrier who asserts that "Cannon's" is located in Solon, Ohio, two and one half miles east of the eastern boundary of North Randall Yard.

The Board must therefore conclude from the record that the Petitioner has failed to sustain its burden of proving that "Cannon's" is located within an area where a telegrapher is employed at North Randall.

The Board is of the further conclusion, since it has not been established by evidence of probative value that Cannons is located within the North Randall area where an operator is employed, that the restriction in Rule 2 did not forbid the handling of train orders by conductors in the situations set forth in the record.

Accordingly, Claims 1, 2, 3, 4, 5, and 6 will 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 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 not violated.

AWARD

Claims 1, 2, 3, 4, 5 and 6 are denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of November 1970.