

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19602**
Docket Number TE-19433

Robert M. O'Brien, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
(Formerly **Transportation-Communication** Division, **BRAC**)

PARTIES TO DISPUTE: (

(Western Maryland Railway **Company**

STATEMENT OF CLAIM: General Committee of the **Transportation-Communication** Division, **BRAC**, on the Western Maryland Railway Company, T-C 5812, that:

1. Carrier violated the Agreement between the parties when on December 5 and 13, 1969, and subsequent dates it required or permitted other employees to handle, copy train orders, or other messages of record governing the movement of trains at Laurel Bank and **Elkins** when no emergency existed.

2. Carrier shall, as a result, compensate the **minimum** basic day to the head out Extra man on the extra list for each date of occurrence.

CARRIER DOCKET: W-45

OPINION OF BOARD: Prior to November 16, 1969 all movements of trains over Carrier's G. C. and E. **Durbin** and **Bolington** Subdivisions were authorized by train orders handled by the Operators, members of the T-C Division **BRAC**, at Laurel Bank and **Elkins**. On November 16, 1969 as a result of Carrier's General **Orders** it was stipulated that train movements on **these** sub-divisions would be made by oral permission received directly by the train **crew from** the Train Dispatcher. With this change the Carrier later abolished the last remaining telegrapher position at Laurel Bank. However, on the claim dates Operators were **employed** at both **Elkins** and Laurel Bank.

The claim arose when Carrier required train crews to use the telephone to receive block authorizations and to report clear at Laurel Bank and **Elkins**, W. Va. from the train dispatcher at **Cumberland**, Md. The Organization maintains that when Carrier required train **crews** to handle the above train orders it violated both the Scope Rule and the Agreement of February 19, 1957. The Organization argues that the instructions given to a crew to proceed to a block are, in fact, train orders, and since such orders must be copied and reduced to writing account Rule 115 of Carrier's Book of Operating Rules said handling of these train orders should have been performed by Operators.

Carrier contends that neither the Scope Rule nor the February 19, 1957 Agreement were violated. The Scope Rule, says Carrier, is general in nature and the Organization has failed to prove through past practice, traditions, and custom that the work in question has been performed by Telegraphers to the exclusion of all others. Furthermore, before the February 19, 1957 Agreement **has** been violated, the Organization must prove that the communication was a train order **or** other message of record, governing the **movement** of trains, **and** it must be copied by persons other than a Telegrapher or Train Dispatcher. Carrier argues that none of these conditions precedent were met. Rather the Dispatcher gave the train crews oral authority to operate on a secondary track in full compliance with its Book of Operating Rules.

This Board is **of the** opinion that the Organization has failed to prove a violation of **the** applicable Scope Rule. **Awards** No. 7400, 7401 and 7402, **involving** the **same** parties herein (Order of Railroad Telegraphers and Carrier herein) make it obvious that Telegraphers do not possess exclusive right to **communicate** train orders via the telephone. Those Awards held it did not violate the Organization's rights for train crews to receive and copy train orders from a Dispatcher by utilizing **a** telephone. Nor do we feel the record proves **a grant** of exclusivity based on past practice, custom, **and** tradition. The record is lacking in evidence to that effect.

Nor do we find that **the** February 19, 1957 Agreement was violated. Award No. 1 of Public Law **Board** No. 453, involving the identical parties herein, held that said **Agreement** confined the **jurisdiction** of the Organization to **messages** of record that **governed** the **movements** of trains which were copied. Carrier **argued** that the **oral** instructions given to the train crews in question **were** not **messages** of **record** and **were** not **required** to be copied by Conductors and **Engineers** and **were** not, in fact, copied by **persons** other than Telegraphers. We find that the **Organization** **has** failed to establish by probative evidence that the oral train orders were copied by persons other than Telegraphers. The record is devoid of any such evidence which would **tend** to prove this necessary prerequisite, and without such evidence, we are left with no alternative other than to deny the claims.

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 **Employees** involved in this dispute are respectively Carrier **and** **Employees** within the **meaning** of **the** Railway Labor Act, as **approved** June 21, 1934;

Award Number **19602**
Docket Number TE-19433

Page 3

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:

E.A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1973.