

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20006
Docket Number TE-19637

Alfred H. Brent, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station **Employees**
((formerly Transportation-Communication Division, **BRAC**)
PARTIES TO DISPUTE: (
(George P. Baker, Richard C. Bond, **Jervis Langdon, Jr.**
(and Willard **Wirtz**, Trustees of the property of
(Penn Central Transportation Company, **Debtor**

STATEMENT OF CLAIM: Claim of the General **Committee** of the **Transportation-Communication Division, BRAC**, on the Penn Central Transportation Company (former NYC-Northern District), TC-5844, that:

CLAIM NO. 1

1. That S. **Kowlczyk** be paid 8 hours pro rata for July 4, 1970 account train orders numbers 4 and 18 copied by employees not covered by our agreement and July 12, 1970 account train order Numbers **8-16-20** copied by **crewmn** at Sterling Yard.

2. That R. O. **Freidlund** be paid eight hours pro rata for June 27, 1970 and June 28, 1970 account train order numbers 43-44-37 and order no. 9 copied by employees not covered by our agreement, at Sterling Yard.

CLAIM NO. 2

1. The Carrier violated the agreement between the parties when it **allowed** or required the Operator-Clerks at North Yard to perform the duties and responsibilities as assigned to the Operator-Clerks at Sterling Yard Monday through Friday of each week except on Saturday, Sunday and Holidays which then are performed at North Yard.

2. That the Carrier shall compensate Mr. E. R. Irons 8 hours at straight time for June 6, 13, 20, 27, and July **11**, 1970 account the aforesaid violations.

CLAIM NO. 3

1. That the carrier violated the agreement between the **parties** when it allowed, permitted and/or required a employee not covered by our agreement to copy train orders at Sterling Yard.

2. The carrier shall compensate the below named claimants for eight **(8)** hour pro rata on the dates as listed.

R. Friedlund	July 26, 27, August 10, 17, 1970
S. Kowalcz	July 18, August 1, 2, 8, 25, 1970
E. R. Irons	July 18, 25, August 1, 8, 1970
B. M. Fair	June 28, July 4, 11, 25, 26, August 8, 1970

CLAIM NO. 4

1. The carrier violated the agreement between the parties when it required and/or allowed employees not covered by the agreement to report themselves in the clear, call for a block and receiving permission to use the main track at Sterling Yard.

2. That E. R. Irons be paid one day's pay at the pro rata rate for August 22, 1970 account the violation.

CLAIM NO. 5

1. That the carrier violated the agreement between the parties when ~~it~~ allowed and/or required employees not covered by our agreement to copy train orders at Sterling Yard and acquiring clearances from the dispatcher.

2. that Mr. E. R. Irons be paid 8 hours pro rata pay ~~for~~ September 12, 1970 account such violation.

CLAIM NO. 6

1. That the carrier violated the agreement ~~between the parties when~~ it allowed and/or required employees not covered by our agreement to copy train orders at Sterling Yard and acquiring clearances from the dispatcher.

2. The carrier ~~shall~~ compensate Mr. S. Kowalczyk ~~eight hours~~ at pro rata rate for October 24, 25, 1970.

CLAIM NO. 7

1. That the carrier violated the agreement between ~~the~~ parties when it allowed and/or required the Operator-Clerks at North Yard to perform the duties and responsibilities as assigned to the Operator-Clerks at Sterling Yard Monday through Friday of each week except on Saturday, Sunday and Holidays which then are performed by North Yard.

2. The Carrier shall compensate Mr. E. R. Irons for September 19, 26, October 3, 1970 and Mr. D. A. Besterce for September 26, October 3, and September 12, 1970 at eight hours pro rata rate for such dates as shown.

CLAIM NO. 8

1. That the ~~carrier~~ violated the agreement between the parties ~~when it~~ allowed and/or required the Operator-Clerks at North Yard to perform the duties and responsibilities as assigned to the Operator-Clerks at Sterling Yard Monday through Friday of each week except on Saturday, Sunday and Holidays which then are performed by North Yard.

2. That the carrier shall compensate Mr. D. A. Besterce for October 31 and November 7, 1970 for eight hours at the pro rata rate.

CLAIM NO. 9

1. That the carrier violated the agreement between the parties when it allowed and/or required the Operator-Clerks at North Yard to ~~perform~~ the duties and responsibilities as assigned to the Operator-Clerks at Sterling Yard Monday through Friday of each week except on Saturday, Sunday and ~~Holidays~~ which they are performed by North Yard and employees not covered by our agreement.

2. That the carrier shall compensate Mr. E. R. Irons for October 10, 31 and November 14, 17, 21, 24, 28, December 5, 12, 1970. Mr. D. Besterce for November 10, 14, 17, 21, 24, 28, and December 5, 1970 at eight hours pro rata for such dates as shown.

CLAIM NO. 10

1. That the Carrier violated the Agreement between the parties when it allowed, permitted and/or required ~~employees~~ not covered by our agreement to copy train orders at Sterling Yard, Utica, Packard Switch and Yates.

K. Kowalczyk	8 hours pro rata on December 19, 26, 27, 1970 and January 1, 2, 3, 9 and 10, 1971.
D. Besterce	8 hours pro rata on December 12, 19, 26, 1970 and January 2, 1971.
B. Fair	8 hours pro rata on January 1, 3, 9, 10, 1971.
S. Kowalczyk	8 hours pro rata on November 7, 1970 and December 12, 1970.

OPINION OF BOARD: In claims #1 through #10 the Organization contends that the Carrier permitted employees not covered by the Telegraphers' Agreement to copy train orders.

The Carrier contends, as a threshold issue, that claims #1 through #8 are barred under rule 35 of the Agreement because the Carrier's highest Labor Officer on the property denied these claims on January 11, 1971 and the Organization failed to forward these **claims** to the Railroad Adjustment Board until December 14, 1971, a period **well** beyond the nine month time limit set forth in Rule 35.

While this Board has held in the past **that such a procedural defect** might be fatal to such claims (see Award 2494 Ferguson, 2nd Division and Award **15848**), in this case the record does not support the Carrier's contention that these **claims** were not timely filed. The Organization pointed out that when these claims were discussed with the highest Labor Officer of the Carrier on the property on January 8, 1971, there was in existence on this property a Public Law Board and the parties are alleged to **have** agreed that these claims were to be held in abeyance until properly disposed of by that Public Law Board. This **was** confirmed by the Carrier's letter of January 11, 1971 and by **the letter of the** General Chairman of the Organization of February 20, 1971.

Rule 35, which sets forth the nine month **time** limit, provides that **the parties may** extend the nine month period by agreement. It would **appear** that **t'** parties in this case did agree not to process these **claim to the Third Division**. National Railroad Adjustment Board pending resolution by the Public Law Board, which agreement would have the effect of delaying the nine month time limit. Therefore the Referee concludes that claims #1 through #10 are timely before this Board for disposition.

On the merits, the Carrier contends that these claims may properly be divided into three groups:

Claims #1, 3, 5 and 6, where the train orders in question were handled by a Train Dispatcher who transmitted same to the Operator Clerk on duty at North Yard Tower, who, in turn, delivered the train orders in question via telephone to various **crewmn** in Sterling Yard.

The second category of claims #2, 7, 8 and 9, which **allege** that **Operator-**Clerks at North Yard on the dates involved performed duties regularly assigned to Operator-Clerks at Sterling Yard, Monday to Friday, involving the handling of train movements during hours when no operator is on duty,

The third category of claims #4 and 10 involve **the copying of train** orders at locations where no Operators are employed.

The Carrier claims that past decisions of this Board have held that in each of the circumstances similar to the above it was appropriate to assign the **work** as it was performed, The Organization contends that Award #6, Public Law Board 369 is controlling and holds that "**Whether** a telegrapher works full or part time at a station, if he is the only employee assigned thereto and he alone performs all of the **communication** and clerical work, he **owns** the **work**."

This Board has held in the past with regard to similar issues that where **it** has been shown that **the** work in dispute belonged to the Telegraphers by virtue of history and **practice** on this property, it shall be deemed Telegraphers work. (Award 13456 House).

The claims **numbered** 1, 2, 3, 5, 6, 7, 8, 9 in this docket **relate** to situations where the Telegraphers regularly performed the work in question and therefore the work shall be deemed Telegraphers work, Since the Carrier claims that **the** claimants would only be entitled to a call as the work **claimed** would have taken no more than a few minutes to perform, Rule 5 of the Agreement would apply. Rule 5 requires:

"Except as provided in Rules 11 and 12, **employees** notified or called to perform service not continuous with the regular work period, **will** be allowed a minimum of 2 hours at time and one-half rate, and if held on duty in excess of 2 hours, time and one-half will be allowed on the minute basis."

The claimants, therefore, are only entitled to 2 **hours' pay** at **time** and one-half for each occasion.

The employees Organization failed to show that the tasks performed in Claim #4 and Claim #10 are regularly performed by Operators. These claims must 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 **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

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That the Agreement was violated in claims #1, 2, 3, 5, 6, 7, 8,
and 9.

The Agreement was not violated in claims #4 and LO,

A W A R D

The claims are granted as modified in the Opinion, Claim #4
and Claim #10 are denied.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of October 1973.

CARRIER MEMBERS' DISSENT TO AWARD NO. 20006
DOCKET NO. YE-19637

REFEREE BRENT

The Award on the merits reflects a failure by the majority to **clearly analyze** the issues in the case, and a resulting reliance on precedents which have no bearing or have been obviated by other controlling decisions.

The reference to Award No. **6** of Public Law Board **369** is wholly inappropriate. **That** Award was based on the so-called "one-man agency" principle which evolved from various Awards of this Board applying the scope rules of agents, or agent-operators agreements. It had nothing to do with handling train orders and had no application at North or Sterling Yards, which are certainly not one-man agencies. It is a serious error to apply that **Award** to the present claims; and especially so when another Award of the **same** Public Law Board No. **369**, Award No. **31**, which was referred to in the record, had **specifically** denied claims for "handling" train orders which **cannot** be distinguished **from** the present claims.

Reliance on Award No. **13456** is likewise wholly unjustified. The Carrier showed that this Award is erroneous and was out of harmony with a solid line of contrary authority on the former New York Central. See Award Nos. **12183, 13231, 16359**. There is no shoving that the work in dispute belonged to telegraphers "by virtue of history and practice" on this property. **On the contrary**, by specific rule, Article **23(a)** the only right of telegraphers is to "handle train orders at telegraph offices . . . where an operator is employed." **Receiving** train orders over the telephone by train crews is not "handling" them, as **has** been many times established.

Finally, the majority completely fails to **analyze** the different factual situations involved in the various claims which **were** lumped together in this docket by the employes and the Board over the Carrier's protest. Not **all** these claims even involved assertions that train orders had been handled. No restriction has been agreed upon, and none **ms** shown in the record, against train **service** employes using the telephone for **any** reason in the course of train operations, except in the **narrow** case where such use involved "handling train orders" as restricted by Article 23(a). That the majority sustained claims for use of the telephone **not** in connection with train orders, and in circumstances where train **orders** were not being handled, is contrary to established railroad practice and common sense.

The majority opinion reflects an unfortunate failure **to analyze** the record **and** apply the contract as intended by the parties.

H F M Braidwood
H. F. M. Braidwood

P. C. Carter
P. C. Carter

W. B. Jones
W. B. Jones

G. L. Naylor
G. L. Naylor

G. M. Touin
G. M. Touin