

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22076  
Docket Number CL-21810

Don Hamilton, Referee

(Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
PARTIES TO DISPUTE: (  
(The Texas and Pacific Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
GL-8200, that:

1. Carrier violated the Clerks' Agreement, and in particular Rule 48-A, when, beginning March 13, 1974, it required Atchison, Topeka and Santa Fe Railway Company employees (who are not covered by the Agreement) to receive, copy and deliver train orders to Texas and Pacific Railway Company train crews at a location where an employee under this Agreement is not employed, and now fails, and refused to compensate Claimants as summarized below, and as required by Rule 48-A, paragraph (5). (Carrier's file 302-164)

2. Carrier shall now be required to compensate Mr. G. E. Allison assigned to position of Agent No. 253, Sweetwater, Texas, his relief, and/or successor(s), four hours' pay as required by Rule 48-A, paragraph (5), beginning with train order No. 701, March 13, 1974, and continuing each day thereafter for each train order copied, handled and delivered (during the position's assigned hours) to Texas and Pacific train crews, for execution, on the main line tracks of the Texas and Pacific Railway Company between Tecific and Clyde, Texas.

3. Carrier shall now be required to compensate Mr. T. L. Hughes assigned to position of Operator-Clerk No. 258, Sweetwater, Texas, his relief and/or successor(s), four hours' pay required by Rule 48-A, paragraph (5), beginning with train order No. 692, March 13, 1974 and continuing each day thereafter for each train order copied, handled and delivered (during the position's assigned hours) to Texas and Pacific train crews, for execution, on the main line tracks of the Texas and Pacific Railway Company between Tecific and Clyde, Texas.

4. Carrier shall now be required to compensate Mr. V. K. Norris assigned to position of Operator-Clerk No. 173, Sweetwater, Texas, his relief and/or successor(s), four hours' pay as required by Rule 48-A, paragraph (5), beginning with train order No. 608, March 14, 1974 and continuing each day thereafter for each train order copied, handled and delivered to Texas and Pacific train crews, for execution, on the main line track of the Texas and Pacific Railway Company between Tecific and Clyde, Texas.

OPINION OF BOARD: This case involves an alleged violation of Rule 48-A of the applicable Agreement, which provides as follows:

Rule 48-A  
TRAIN ORDERS

"(1) No employ 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. The employe entitled to call will be notified.

(2) A telegrapher will be called to handle train orders and instructions pertaining to the operation of a work train tying up or leaving from a station where a telegrapher is employed, but not on duty. The telegrapher will be paid in accordance with the call rule.

(3) Should non-telegraph agents be used to handle train orders on any day, they will be paid for eight (8) hours' service for that day at the minimum Agent Telegrapher's rate on the Division.

(4) If instructed by Train Dispatcher or other authority to clear train or trains before going off duty, leaving clearance card and/or orders in some specified place for those to whom addressed, the employe shall be paid as provided in the call rule.

(5) If train orders are handled by persons other than those specified in Paragraph (1) of this rule in other than emergencies as defined in Paragraph (6) of this rule at a location where an employe under this Agreement is not employed, a telegrapher to be designated by the District Chairman will be allowed four hours' pay at the minimum Telegraphers' rate applicable on the division. Four hours pay shall be applicable to each location in any consecutive four hour period, regardless of the number of orders handled. The Carrier will notify the District Chairman of each such train order handled with a copy to the General Chairman.

"(6) **Emergencies**, as referred to in **Paragraph (5)** of this Article, **shall** include only casualties or accidents, **storms**, engine failure, wrecks, obstruction to tracks, washouts, tornadoes, slides, or unusual delays which could not have been anticipated by the Dispatcher when the train was at the last previous open telegraph office, and which would result in serious delay to traffic."

In this case, The Texas and Pacific Rail-way **Company** (hereafter referred to as "Carrier") and the Santa Fe Railway entered into a joint trackage **agreement** to operate **Unit Train Service** between Fort Worth, Texas, and Clovis, **New Mexico**. The trains operating pursuant to this Agreement are identified as **MFS-Westbound** and **SFM-Eastbound**.

When **MFS-Westbound** departed Fort Worth, Texas, the Carrier's **dispatcher** issued train orders which were copied, handled and delivered by Carrier Telegraphers to the train crew of the Carrier, for **movement** westward on **mainline** trackage of the Carrier to Tecific, Texas.

Upon reaching Tecific, the train crew obtained verbal authority from the Santa Fe Control Station to allow the train and crew of the Carrier to enter the Santa Fe trackage. The train then **proceeded** on Santa Fe trackage to the Santa Fe Depot, where it was "yarded" and turned over to Santa Fe train crews.

The train then continued on Santa Fe trackage with Santa Fe crews to **Clovis**, New Mexico.

The **SFM-Eastbound** originates in **Clovis**, New Mexico, on Santa Fe property, with Santa Fe crews and operates under Santa Fe orders to Sweetwater, Texas.

The Santa Fe crews are changed for crews of the Carrier at the Santa Fe **Sweetwater** Depot. The Santa Fe operator gives the Carrier crew clearance and other orders for **operation** of the train to Tecific. The Santa Fe **operator** also gives the Carrier crew train orders for movement from Tecific to Clyde, Texas.

The Organization filed claims asserting **that** the Carrier violated the Agreement with the Clerks beginning **March 13, 1974**, when the Carrier required Santa Fe **employees** to receive, copy and deliver train orders to **Carrier** train crews at a location where an **employee** under the Agreement is not employed.

The Organization seeks compensation for certain designated **employees** at the rate of **pay** of four hours each day in which orders were copied, handled and delivered to Carrier crews for execution on the main line tracks of the Carrier between Tecific and Clyde, Texas, during the assigned hours of each position.

The Organization argues that Award 20173 is controlling and should be followed in **this** case. The Award cited was between these same parties. Referee Dana E. Eischen found in that case that a dispatcher for the Louisiana and **Arkansas** Railway Company issued a train order. The order was received and copied by a conductor for The Texas and Pacific **Railway Company**. The handling of the order by the conductor was the basis of the claim in that case.

Referee Eischen held that the train order was copied and received by the conductor and that he was neither a **train** dispatcher nor an employe covered by the **Memorandum** Agreement. The claim was allowed as presented.

The **Memorandum Agreement** interpreted in Award 20173 is the same as what is **now** referred to as Rule 48-A in the instant case.

The **rule** relied upon says, "No employe other than covered by this Agreement and train dispatchers will be permitted to handle train orders \* \* \*", and if train orders are handled by persons other **than** those so **specified** and no emergency as specifically enumerated in the **Rule** exists, then negotiated damages as set forth in the **Rule** are in order.

The key to this dispute is the language, "No employe".

In Award 20173, Referee Eischen quite properly found that the Carrier had required an employe not covered by the Agreement to receive and copy a train order.

In the instant case, the claim is that The Texas and Pacific Railway **Company** required Santa Fe **employees** to receive, copy and deliver train orders to Texas and **Pacific Railway Company** train crews.

**Rule** 48-A was negotiated between The Texas and **Pacific** Railway Company and the Brotherhood of Railway, Airline and **Steamship** Clerks to specifically guarantee that the Carrier would not permit **or** direct any other **employees** of the Carrier to **handle** train orders except in the certain specific instances enumerated in the **Rule**. The Rule

further provides that if the Carrier does so utilize other employees not covered by the **Agreement**, then and in that event a penalty **payment** as specifically set out in Section 5 of the **Rule** will be paid.

Award 20173 properly interpreted the Rule and applied it to the facts of that case.

However, the facts in the instant case are **substantially** different and do not give rise to the same **interpretation**.

The Santa Fe employees who received, copied and delivered the train orders to the Texas and Pacific Railway **Company** train crews are not **employees** of the Texas and **Pacific Railway Company**.

The Carrier **made** an **Agreement** with the Clerks to prohibit **all** other employees of the Carrier from handling train orders except as provided in Rule 48-A. Unless those who handle the train orders are employees of the Carrier, Rule 48-A does not apply.

This Award in no way **modifies, interprets, amends** or changes Award No. 20173. We **re-affirm** the holding in that case as **applied** to the facts **enumerated** by Referee Eischen. We do not agree that **the same** fact situation exists in the instant case.

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

That the **Agreement** was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:

A. W. Paulsen  
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1978.