

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22728
Docket Number CL-22729

George S. Roukis, Referee

PARTIES TO DISPUTE:

(Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Joint Texas Division of CRI&P-FW&D
(Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8660) that:

(1) Carrier violated Rules 1, 4 and 39 and other related rules of the Agreement when it allowed extra 902 south to be cleared by other than Joint Texas Division employees at Fort Worth, Texas to become effective at Waxahachie, Texas, a point on the Joint Texas Division on December 24, 1976.

(2) Carrier is now required to compensate Mr. A. Vess for eight (8) hours' pay at his punitive rate.

OPINION OF BOARD: The pivotal question in this dispute is whether or not Carrier violated Agreement Rules 1, 4 and 39 when the train dispatcher in the Fort Worth and Denver Chief Dispatching Office issued to the North Yard Clerk-Operator the running orders, train orders and clearance for Extra 902 South prior to its departure from the North Yard.

Claimant contends that the Joint Texas Division Agreement vests exclusive right to handle train orders on Joint Texas Division trackage to employees covered by this Agreement and cites among other Division rulings Third Division Awards 15559, 15860, 14591 and 14300 as controlling on this point. He argues that he should have been called on duty at the intermediate point of Waxahachie to receive the orders for delivery to the train.

Rule 39(a) which is pertinent to this question reads:

"No employees, except those covered by this agreement and train dispatchers, will be permitted to handle train orders at points where telegraph and telephone offices are located except in emergency, in which case the telegrapher or telephoner, if not on duty but available for duty and can

"respond within twenty minutes from time called, will be paid for a call under the provisions of Rule 5."

Carrier, on the other hand, asserts that Claimant did not have an exclusive right under the Scope Rule or alternatively demonstrated that a change or improvement occurred that would violate section (b) of that Rule. It avers that Claimant could not show that the train orders were handled at Waxahachie or that Rule 39 precludes a train crew from receiving train orders at locations other than the point of implementation. It cited Third Division Award 14300 as dispositive of this issue.

In our review of the case, we recognize the importance of judicial consistency and as such find that the Agreement was not violated. Careful reading of the applicable contract language, particularly Rule 39 (a) (supra) indicates that in order for Claimant to prevail in this dispute, he must establish clearly that the train orders were issued at Waxahachie. He has not borne this burden and the only exclusivity that we find in the Scope Rule covers employees permitted to handle train orders at points where telegraph or telephone offices are located. There is no evidence of any variant past practice that supports Claimant's position and it is not prohibited under the interpretative thrust of our ruling in Award 14300 for train orders to be copied at blind sidings where no telegraph or telephone offices were located.

We believe upon the record presented that Claimant did not prove that the contested work accrued exclusively to him by unmistakable Agreement language or undisputed past practice and thus we are compelled to 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 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.

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Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: *A.W. Paulose*
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1980.