

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23074
Docket Number a-22793

Richard R. Kasher, Referee

PARTIES TO DISPUTE: {Brotherhood of Railway, Airline and Steamship Clerks,
{ Freight Handlers, Express and Station Employees
(SoO Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8696) that:

or Am No. 1

Claim of H. H. Geske, Agent and Operator, Trout Lake, Michigan
for 2 hours pro-rata on February 3, 1977, for violation of Telegraphers'
Rule 20, when Agent and Operator Geske was required to relay via Bell Tele-
phone Train Order No. 329 to the Conductor of Work Extra 731 at Engadine.

CLAIM NO. 2

Claim of R. H. Finstad, Agent and Operator, Gordon, Wisconsin,
for 2 hours pro-rata on February 6, 1978, for violation of Telegraphers'
Rule 20, when Agent and Operator Finstad was required to relay via Bell
Telephone Train Order No. 111 to the Conductor of Extra DMIR 156 West at
Chittamo.

OPINION OF BOARD: Claims Nos. 1 and 2 arose as a result of the Carrier
requiring operators to verbally relay by telephone train
orders, which they had previously copied, to train crews at locations where
an operator working under the Agreement was not on duty in situations that
did not involve emergencies. The Organization argues that such acts are in
violation of Rule 20 of the parties' Agreement and the Joint Six Organization
Train Order Agreement of November 28, 1945. Rule 20 of the parties' Agree-
ment provides:

"Rule 20. Train Orders.

(a). No employee other than covered by this schedule
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 emerg-
ency, in which case the telegrapher will
be paid for the call.

(b) When employees not covered by this agreement are required **to handle** train orders at a location where employees **covered by this agreement are** not on duty any **portion** of the **day** or night, the senior telegrapher working at the nearest location to the point on the **seniority** district where the train order is handled shall be notified and allowed a call at the minimum **telegraphers'** rate applicable on the seniority district for each **occurrence**.

(c) Except where **other** telegraphers are **employed, Traveling Agents shall be considered** employed and available to **perform service** required at all stations **within his assigned territory**. In the event the **Traveling Agent** is on **duty** at the time the **violation** occurs, he **shall be paid two (2) hours** at the pro rata rate of his **assignment**."

The Joint Train Order Agreement of November 28, 1945 provides:

"(1) It is hereby agreed that train and **engine** service employees will not be **required to call** the **dispatcher** for the purpose of receiving orders governing the movement **of trains**, and that **train and engine service** employees will neither be **required nor permitted** to copy train orders **governing** the movement of trains other than **in** emergencies as herein defined.

(2) Emergencies as herein specified shall include casualties or accidents, **engine** failures, v-recks, obstruction of tracks, washouts, tornadoes, storms, **slides** or unusual **delays due** to hot box **or break-in-two** that could not have been-anticipated by **dispatcher** when train was at last previous telegraph office, **which would result in serious** delay to traffic.

(3) When no emergency exists, as **above** defined, an **inquiry** by train or **enginemen** as to the time or location of another train or **in** connection **with** their work, will not be considered a **violation** of this **agreement** when it does not involve the **transmission** of **train** orders, messages **of record, reports** or OS of trains.

(4) It shall not be considered as a **violation** of this agreement for **train** or **enginemen** to obtain necessary clearance at an **automatic interlocker signal** in stop position due to **signal failure, or for train or enginemen on branch line trains** to obtain **check of trains** direct from the dispatcher, **at junction points** where a telegrapher is not now employed, but only on such **trains as are** due to arrive at such junction point after **branch line** train has **passed** the last telegraph or telephone office before arrival at junction."

It **is** not disputed in the record that the Conductor of Work **Extra 731** copied Train Order No. **329** at **Engadine** on February 3, **1977** (Claim No. 1). It is not disputed in the record that the Conductor of **Extra DMIR 56** West copied **Train Order** No. **111** at **Chittamo** on February 6, **1978** (Claim No. 2). These acts seem to be in direct conflict **with** that part of paragraph (1) of the Joint Train Order Agreement of November 28, **1945** stating:

" . . . that **train and engine service employees will** neither be required - **nor permitted to copy train orders governing the movement of trains other than in emergencies** as herein defined."
(underscoring added)

Inasmuch as it is not alleged that an emergency existed' (paragraph (2) of the **Joint Train Order Agreement**) and the exceptions of **paragraphs (3) and (4)** of the **Joint Train Order Agreement** are not **argued**, it would seem that the call provided in Rule 20 (b) **supra**, would be appropriate.

The Carrier cited an award issued by Referee **Blackwell**, Award No. **32**, Case No. **22**, PLB No. **1682**. Referee **Blackwell** denied a call to an operator who claimed that an operating rule was violated when a conductor was permitted to copy a train order, which was radioed rather than written and **hand-delivered**

by the operator. In denying the call, Blackwell emphasized the fact that the claimant performed all of the work that was required to be performed by an operator in the relaying of a train order under the applicable rule. The award cited by Carrier is distinguished, however, in that the rule concerning the relaying of a train order therein was not a joint train order rule.

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 violated.

A W A R D

claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1980.

