

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25307
Docket Number CL-25244

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Central Vermont Railway, Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that: (GL-9781)

(1) Carrier violated the Agreement when it allowed and permitted others not covered by the Agreement to handle communications related to train movements at various points where telegraphers are employed.

(2) Carrier shall now be required to compensate named claimants a call for each incident the violation occurred.

OPINION OF BOARD: This dispute involves the communication of train movements by non-Telegraphers at locations where Telegraphers are employed. Specific to this dispute, the direct issues relate to whether the Scope Rule of the Agreement (Article 1) and Article 76.1 have been violated. That later Article reads as follows:

"Handling Train Orders

76.1 No employee, 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 emergency in which case the employee will be paid for the call."

In the instant case, the record on property substantiates that Telegraphers were employed at the locations, but not on duty at the specific times in dispute. The Organization contends that the Scope Rule on this property is specific and as such work once assigned cannot be unilaterally removed. The central issue in this case is whether or not the OS'ing of trains are train orders as covered by the Agreement and therefore exclusive to Telegraphers under the Scope Rule. By letter of September 23, 1982, the Organization states its position that:

"an 'OS' is a formal train report of the time of arrival, departure or passing of a train. The purpose of the 'OS' is to determine the location of a given train at all times and is used in the control and movement of trains. Accordingly, it is communication of record, as is a train order or clearance, and as such is work covered by the Scope Rule of the Agreement, limited to covered employees at those stations where a Scope employee is employed."

By letter of December 21, 1982, the Carrier responded that:

"Notwithstanding the employees' position that an OS is a 'communication of record' likening it to a train order or clearance, it is not a train order. Neither Article 1 or Article 76 of your agreement has been infringed upon through conductors providing OSes of their trains."

As a preliminary point, arguments, lines of reasoning and documentation not discussed on property, may not be considered now properly before this Board. This is a firmly established principle codified by Circular No. 1 and at the base of numerous Awards (Third Division Awards 20620, 22054, 24716). The central issue to consider is whether or not an OS is a train order. The burden is on the Organization to clearly show that the OS is covered by this Agreement and assigned therefore to Telegraphers.

The National Railroad Adjustment Board has held repeatedly that the weight of the evidence for any claim is the responsibility of the moving party (Third Division Awards 13691, 19506). A thorough reading of the numerous Awards cited by the Organization does not, in the mind of this Board, substantiate that the OS is a train order as contemplated by Article 76.1. Past Awards cover circumstances and Agreements which are substantially different from the instant case. In fact, some Agreements have contract provisions covering the OS'ing of trains on a particular property (see, for example, Award 22257). Since this Board cannot enlarge upon an existing Agreement, but only interpret it, we are bound by the evidence as presented on property as to the meaning as contemplated by the parties to disputed provisions. As such, finding no substantial evidence that the OS'ing of trains was work assigned by Agreement on this property to Telegraphers this Board rules that the burden of proof has not been met.

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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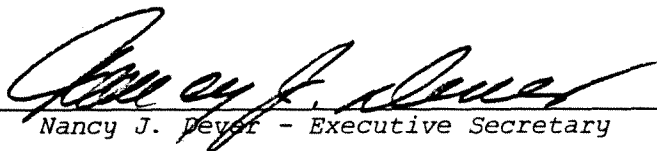
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A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 28th day of February 1985.

LABOR MEMBER'S DISSENT TO
AWARD NO. 25307, DOCKET NO. CL-25244
(REFEREE ZUSMAN)

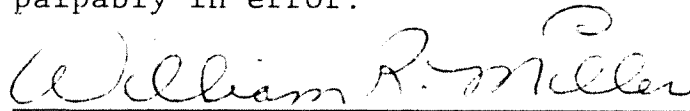
The majority opinion has erred in its assertion that the Organization failed to substantiate that the signed "OS" is a train order as contemplated by Article 76.1. That determination fails to take into consideration that the Employees never argued that the communications in dispute were train orders coming from the Dispatcher's office, reduced to writing, and handed to a Crewman of a train, but that the term "Orders", as used in the Agreement, is not as limited as this opinion would indicate, but includes telephone information of trains as well. The Employees' position bolstered by several far better reasoned Awards from this Board as well as Court opinions.

The record in this dispute reveals that the former abolished Telegrapher Positions had done the identical work before, and that no agreement was made prior to their abolishment for the work to be handled in a different manner.

The Scope Rule is not general in nature, but is a "positions and work" rule and that in each one of the instances involved in this dispute, the referred to OS'ing is the work of reporting such information to the Dispatcher which would have been performed by the Employees had their positions not been abolished. Thus, Article 1 was violated when the Carrier removed the disputed work from the Agreement and Article 76

was violated when Carrier allowed others not covered under the Agreement to perform the disputed work. This Award must be viewed as being completely contrary to the legion of Awards cited by the Employees in their defense.

Award No. 25307 is palpably in error.


William R. Miller, Labor Member, NRAB

Date March 9, 1985