

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25607  
Docket Number CL-25644

Frances Penn, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
( Freight Handlers, Express and Station **Employees**

PARTIES TO DISPUTE: (

(Delaware and **Hudson** Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (CL-9850)  
that:

(a) Carrier violated Article No. 23 of the Agreement when on **October**  
1, 2, 6, 17 and 18, 1981, Carrier required an **employee** not covered by the  
Agreement to copy train orders.

(b) Claimant V. D. **Slamas** be compensated one call at the rate of time  
and one-half for each of the following dates: October 1, 1981; October 2, 1981;  
**October** 6, 1981 (**three** calls); October 17, 1981 (four calls); and October 18,  
1981; in accordance with Article No. 14.

OPINION OF BOARD: The facts in this matter are not in dispute. The Claimant,  
a Telegrapher, requests compensation for train orders which  
were copied by **Employees** who are not covered by the Agreement at ten locations  
on the property. No **Employees** covered by the Agreement were stationed at the  
locations in question.

The Organization cites both Article 1, the Scope Rule and Article 23  
of the Agreement, dated April 1, 1957. Article 1 reads:

"ARTICLE NO. 1

"Scope

"A. The following rules of service and rates of pay will apply  
to Agents, Ticket Agents, Agent-Assistant Yardmasters, Assistant  
**Agents**, and Operators of mechanical telegraph machines, as listed in  
Article No. 38, and such other positions in these classifications as  
may be added thereto; and to Agent-Telegraphers, Agent-Telephoners,  
Assistant to Agents, Telegraphers, Telegrapher-Clerks, Telephone  
Operators (except Switchboard Operators), **Towermen, Levermen**, Tower  
and Train Directors, Block operators, **CTC** Machine Operators (**employees**  
whose duties **require** the operation of **CTC** machines where the issuance  
of train orders is not a part of the assignment); all of whom are  
hereinafter referred to as **employees**.)

"B. All **employees** herein specified shall be paid on the hourly  
basis, except as shown in Article No. 38 or as may be otherwise  
agreed upon."

Article 23 reads:

'ARTICLE NO. 23

**"Handling Train Orders**

"A. No employe other **than** covered by **this** Agreement and train dispatchers will be permitted to handle train orders, except in cases of emergency.

"B. If train orders are handled at stations or locations where **an** employe covered by this agreement is employed but not on duty, **the** employe, **if** available or **can** be promptly located, will be called to perform such duties and paid under the provisions of Article No. 14; if available and not called, the employe will be compensated as if he had been called.

"C. **Emergencies** as specified in the preceding paragraphs of this Article shall include only casualties or accidents, storms, engine **failures**, wrecks, obstructions to tracks, washouts, **tornadoes**, slides, or unusual delays due to hot boxes or break-in-two **that** 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."

"ARTICLE NO. 14

**"Calls, Overtime, Suspensions, Etc.**

"A. Employes notified **or** called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) **hours** work or less, and if held on duty in excess of two (2) hours, **time** and one-half will **be** allowed **on** the minute basis."

The Organization maintains that the Claimant was available **on** each of **the** occasions to copy and deliver train **orders** and the fact that he was not used by the Carrier was a direct violation of the Agreement which provides, according to **the Organization**, that any work related to train orders, including the copying of train orders, **belongs** exclusively to Telegraphers. The Organization states that the language of **the** Agreement. which has been in effect since 1957, has the **same** meaning as it did **when** it was originally agreed to. Since the Agreement applies to the entire property, the Carrier must comply with the Agreement **on** its entire property.

The Carrier contends that for a **number** of years Employes not covered by **the** Agreement were permitted to copy train orders at locations where Telegraphers are not employed. The Organization, the Carrier states, has not **proven** that the handling of train orders at locations where Telegraphers are not employed is work reserved exclusively to Employees covered by the **Agreement**.

Examination of the many Awards cited by the Parties shows that these **provisions** relied on in this claim and **others** similar to it on other Railroads have been the subject of controversy and **numerous Awards** over the years. However, the **Awards** are consistent in holding that the Scope Rule does not define **or** describe the particular duties of **the** job titles **enumerated** therein. It merely recognizes the jobs covered by the **Agreement** and the representational jurisdiction of the Organization. Because the Scope Rule is general in **nature**, the Claimant's right to recover under it must be determined from a consideration of tradition, historical practice and customs. As stated in Third Division Award No. 10379:

"There is no disagreement **on** the facts in this case. There is disagreement only with the interpretation of the Scope Rule, Rule 58 and the **applicablility** of the **Coal** Fields Agreement of March, 1937.

"The Scope Rule does not define or describe the particular duties of the job titles **enumerated** therein. It merely recognizes the jobs covered by the Agreement and the representational jurisdiction of the Organization. This is a well determined principle which this Board has pronounced in numerous decisions. It is sufficient to cite only Awards hb. 8793 (Dougherty), 8831 (Dougherty), 8838 (**McMahon**), 10070 (Gray), 9204 (Stone) and 9953 (**LaDriere**). This principle was well stated in Award No. 9956 (**LaDriere**) as follows:

..the claimant relies on the Scope Rule which is general in nature and specifies positions rather than work to be done, so that claimant's right to recover thereunder must be resolved from a consideration of tradition, historical practice and custom...."

After careful evaluation of the record in this case, the Board concludes that the Organization has failed to prove that it has the exclusive right to copy train orders on this property at locations where no Telegraphers are employed. The Organization has submitted no substantive evidence to show that it is the "tradition, historical practice and custom" for **Telegraphers** to have exclusive claim to copy train orders at such locations. The Organization has not rebutted the Carrier's statement in its submission to this Board, **"Carrier** has for numerous years permitted engine/train service employees to copy train orders at points/locations where telegraphers **are not** employed. **This** is a historical practice and custom which cannot be ignored."

A long line of Third Divison Awards, among them Awards **No.** 1581, No. 9262 and No. 13972 establish that at locations where no Telegraphers are employed other train service **Employees** may copy train orders. For this reason, the Board will deny this 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
~~Nancy J. Dederer - Executive Secretary~~

Dated at Chicago, Illinois, this 22nd day of August 1985.

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