

Award No. 1169
Docket No. TE-1066

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers on Atchison, Topeka and Santa Fe Railway, that officials of the Carrier, in directing telegraph or telephone operators to place train orders and post-dated clearance cards for same, received by them while on duty, on the train register book in a room adjoining, or, in the telegraph or telephone office to be picked up by the trains addressed several hours after the operator has been released from duty for the day, and specifically so at the Reedley, California telegraph office, are violating Operating Rules 210 and 217 of the Carrier and Rule 13 of the Telegraphers' Agreement, and that this improper practice shall be discontinued."

EMPLOYEES' STATEMENT OF FACTS: "An Agreement bearing effective dates of February 5, 1924, and August 1, 1937 as to rules governing working conditions and wage rates respectively is in effect between the parties.

"On or about January 1, 1938 a second telegraph position at Reedley, California was abolished, the remaining telegraph position was assigned hours 8:00 A. M. to 5:00 P. M. less one hour for meal.

"February 23, 1938 train orders Nos. 46 and 49 addressed to C. & E. Extra 1230 at Reedley were transmitted to and completed by the telegrapher on duty at 4:50 P. M. At the same time Clearance Card No. 1 showing Orders 46 and 49 thereon and dated February 24, 1938 was authorized by train dispatcher showing the Time OK as 2:15 A. M.

"February 24, 1938 Train Orders Nos. 67 and 68 addressed to C. & E. Extra 1255 at Reedley were transmitted to and completed by telegrapher on duty at 7:50 P. M. At the same time Clearance Card No. 1, showing Orders 67 and 68 thereon and dated February 25, 1938 was authorized by train dispatcher showing Time OK as 3:40 A. M.

"February 25, 1938 Train Orders Nos. 75 and 76 addressed to C. & E. Extra 1263 at Reedley were transmitted to and completed by the telegrapher on duty at 7:50 P. M. with Clearance Card No. 1 dated February 26, 1938 showing Time OK as 3:45 A. M.

"Similar transactions occurred February 28, March 1st, 2nd and subsequent dates. Before going off duty the telegrapher, on instructions, placed those orders and clearance cards in train register, which was placed on counter of ticket window under grill to be picked up by addressee at time telegrapher is not on duty."

General Chairman Elliott replied to Mr. Gregg's letter under date of October 29, 1938, as follows:

'Your 135-32-A letter October 26th relative the handling of train orders Reedley.

'I believe you have the correct slant; of course there is to be taken into consideration Article 13 of the Telegraphers' Schedule as interpreted by the Board in its Award 709.'

The first complaint registered against the practice instituted at Reedley was filed by the local chairman under date of April 20, 1938, and, as before stated, was on the basis that it was unsafe and not in conformity with the Carrier's Operating Rules 210 and 217. Award No. 709 was issued by the Board under date of August 3, 1938, and the erroneous assumption by the Board in its 'Findings' in that award that the words 'handle train orders' meant hand to hand delivery, contrary to the understanding of the parties, undoubtedly caused the General Chairman to inject Article XIII into the claim in his letter of October 29, 1938, notwithstanding in that letter he also stated that 'I believe you have the correct slant. . . .' of what the Carrier understood from the basis of the claim 'that the method of handling train orders at Reedley does not constitute a violation of any agreement between the Telegraphers and this Company. . . .' Had the majority in its 'Findings' in Award 709 not erroneously assumed what the words 'handle train orders' as used in Article XIII meant, and that it was an erroneous assumption has been clearly proven by the Carrier in the evidence herein submitted, the present claim of the organization would be before the Board as a protest, under the Railway Labor Act, against Carrier's operating practices; indeed, boiled down, all the Board is asked to decide is whether it shall vest in the employees the right to say what operating practices the Carrier shall adopt and pursue in the performance of its business, because the Carrier has shown that its operating practices are not in contravention of the provisions of the agreement between the parties. The Board is, therefore, asked to dismiss the complaint of petitioner on the ground that the Board is not empowered, under authority reposed in it, to rule that the employees shall determine what operating practices the Carrier may adopt."

OPINION OF BOARD: For convenient study we requote the claim, as follows:

"Claim of the General Committee of The Order of Railroad Telegraphers on Atchison, Topeka and Santa Fe Railway, that officials of the Carrier, in directing telegraph or telephone operators to place train orders and post-dated clearance cards for same, received by them while on duty, on the train register book in a room adjoining, or, in the telegraph or telephone office to be picked up by the trains addressed several hours after the operator has been released from duty for the day, and specifically so at the Reedley, California telegraph office, are violating Operating Rules 210 and 217 of the Carrier and Rule 13 of the Telegraphers' Agreement, and that this improper practice shall be discontinued."

The claim, compared with current dockets and awards, and earlier ones, only is novel in detail. As in other cases, the carrier sought to make delivery of train orders at a station where a telegrapher was employed, through means other than its telegrapher. One explanation is that the telegrapher was not on duty at the time of the departure of the trains in question, but a sufficient answer is that the telegrapher, although not on duty, was available and subject to call, a situation comprehended in the agreement. We have consistently held that such attempted circumvention of the rule was abortive. The carrier emphasizes its right to conduct the working details of its railroad, and urges that if it may not proceed in the manner here it is being subjected to control by forces acting without

authority. We do not view the problem in that light. The carrier fixed the status of the station in question, denominating it a telegraphic one, and at all times important here assigned one telegrapher to the station. In such circumstances, what does the rule require? We have stated it often. Briefly, our holding has been that at all telegraphic stations train orders shall go through telegraphers, "in usual course if on duty, and pursuant to 'call' if off duty," directly to train crews. The purpose of the agreement was to assure telegraphers employed by carriers the full fruits of their employment. Award No. 86. The gist of our present holding is, and the spirit of all our holdings on the question involved has been, to give recognition to the reasonable meaning of the agreement, into which the carrier, no less than the employes, competently entered.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes 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 carrier violated the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of July, 1940.

DISSENT TO AWARD NO. 1169, DOCKET NO. TE-1066

What has been said in Dissent to Award No. 1166, Docket No. TE-1061, a situation closely parallel to that of the instant case, is applicable to the Award in the instant docket.

The distortion of the purpose and meaning of Article XIII in Award No. 1166 and here again in Award No. 1169 is given further emphasis by the primary statement in the Opinion of Board here immediately following re-quotation of the claim, which statement reads:

"The claim, compared with current dockets and awards, and earlier ones, only is novel in detail. As in other cases, the carrier sought to make delivery of train orders at a station where a telegrapher was employed, through means other than its telegrapher."

Article XIII specifies restriction under the given circumstances of that Article, which it states as follows:

"No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders, etc."

Here the Award in its Opinion declares that the carrier violated that Article because it "sought to make delivery of train orders . . . through means other than its telegrapher."

In other words, the Opinion says that though Article XIII specifies that "no employe will be permitted to handle train orders" under the given circumstances stated in the Article, this Award (conceding that the circumstances are those comprehended by Article XIII) states that the restriction applies to means,—means that are inanimate, despite that the interdiction of Article XIII is specifically limited to living human beings, "employes,"—the means in this case being a train register book in the immediate or adjoining room of the one telegraph office involved at which there was but the single telegrapher who handled the train orders, and no other employe than the train crew who received and executed them handled those orders.

The handling that was given in this case cannot be, by any logical process of reasoning, found to be in conflict with the restrictions imposed by Article XIII containing specific limitation to employes other than telegraphers and train dispatchers, which limitation is not in any respect to inanimate objects which telegraphers may use in handling train orders. Nonetheless, we have an Opinion here holding that the placing of such train orders on a register book is prohibited and "that such attempted contravention of the rule was abortive."

It is submitted that if there is found anything abortive, distorted or twisted in connection with the record and the agreement between the parties provided by this docket, it will be apparent to other impartial reviewers that it lies in the unwarranted extension and distortion of meaning given to the words of Article XIII in the Opinion of Board here to the effect that the restriction of Article XIII extends to inanimate means in addition to other than telegraphers and train dispatchers when the wording of that Article states the restriction to be that no employe other than telegraphers and train dispatchers named by the Article come within its restriction.

R. F. RAY
C. P. DUGAN
R. H. ALLISON
A. H. JONES
C. C. COOK