

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILWAY COMPANY

(Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Wabash Railway that, the telegraphers occupying the telegraph positions in the Luther Yard Telegraph Office, St. Louis, Mo., are entitled under the rules of the telegraphers' agreement to a call for each instance since October 12, 1940, in which they have been required while on duty to receive train orders and prepare clearance cards addressed to train crews which were to receive the same at Luther Yard at a time of day when said telegraph office would be closed, and were instructed by the Carrier to leave these train orders and clearance cards pinned to the train register, lying elsewhere in the telegraph office or in the hands of employees in the office, not covered by the telegraphers' agreement, to be picked up by or delivered to the train crews addressed.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of October 16, 1927, as to rules of working conditions, and August 1, 1937, as to rates of pay, is in effect between the parties to this dispute. The two positions of telegrapher maintained by the carrier in the Luther Yard Office at St. Louis, Missouri, with hours 3:30 A. M. to 11:30 A. M. and 5:30 P. M. to 1:30 A. M., respectively, are covered by said agreement.

Prior to, on, or about March 15, 1933, three shift telegrapher positions, producing continuous telegraph service, were maintained in the Luther Yard Telegraph Office by the carrier, with hours of service 7:30 A. M. to 3:30 P. M., 3:30 P. M. to 11:30 P. M., and 11:30 P. M. to 7:30 A. M.

Effective on or about March 15, 1933, the second shift telegraph position, with hours 3:30 P. M. to 11:30 P. M., was abolished and the hours of service of the remaining two shifts were re-arranged 3:30 A. M. to 11:30 A. M. and 5:30 P. M. to 1:30 A. M. As a result of this change, no telegrapher was regularly on duty in this office between the hours of 11:30 A. M. and 5:30 P. M. and between 1:30 A. M. and 3:30 A. M.

Since, at least, December 1, 1939, the carrier has required the two telegraphers, whose shifts are not consecutive for intervals of two hours in the morning and six hours later in the day, to leave on a desk in the telegraph office train orders received by them while on duty for delivery to trains departing during the intervals when no telegrapher was on duty, which train orders were picked up from the desk by the train crews to whom the train orders were addressed.

committee to modify the rules of the Telegraphers' Schedule in a manner contrary to the provisions of Section 6 of the Railway Labor Act.

OPINION OF BOARD: This claim is presented by the General Committee of The Order of Railroad Telegraphers on behalf of the telegraphers at the Luther Yard telegraph office at St. Louis, Mo., against the Receivers of the Wabash Railway Company.

The claim involves an interpretation of parts of the rules of the current Telegraphers' Schedule or agreement with this carrier. The pertinent portions are parts of Rule 1 and of Rule 5. The following is from Rule 1:

Rule 1.

"(a) Following rules and rates of pay shall apply to telephone operators, agents, agent-telegraphers, agent-telephoners, towermen, levermen, block operators and car distributors, whose positions are shown in the sub-joined wage scale, who shall hereinafter be considered as employees covered by this agreement."

"(c) No employe other than those 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 an emergency, in which case the telegrapher will be paid for a call. Train dispatchers will report to the chief dispatchers all orders so issued and the telegrapher entitled to the call will be notified."

Rule 5. Part of (b)

"Employees notified or called to perform work not continuous with the regular work period, or continuous with, but in advance of 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 facts upon which this controversy is based, briefly stated, are as follows: Effective beginning March 15, 1933, there were two shifts for telegraphers at Luther Yard. The shifts were from 3:30 A. M. to 11:30 A. M. and from 5:30 P. M. to 1:30 A. M. This arrangement left two periods, one of two hours and one of six hours, when no one covered by the scope rule of the Telegraphers' Schedule was on duty. Beginning as early as December 1, 1939 the carrier required the telegraphers to leave on their desks in the telegraph office train orders received by them while on regular duty to be picked up by train crews at times when no telegrapher was on duty, or in other words, when no person covered by the Telegraphers' Schedule was available to make manual delivery of the orders to the train crews.

In the light of these facts it is the contention of the claimant that for the purpose of making manual delivery of orders the telegraphers were entitled to calls, and that for each instance of failure to call they are entitled to pay agreeable to the terms of the quoted portion of Rule 5.

The decision here must depend upon what is meant by **handling train orders**. Rule 1 (c). The easy, and perhaps excusable, thing to do would be to follow the precedents set forth in Awards 1166, 1169, 1170 and 1422, since the factual situations in those cases were analogous to the one which is presented by this record, but as Referee here, I cannot do so. My sincere conviction is that the decisions there were predicated on a fallacious premise, and that the decisions, to the extent that they interpreted and applied the rule, were incorrect.

Claimant relies in certain degree for support of its interpretation of the meaning of **handling train orders** upon a purported interpretation contained in Award 709. To my mind too much significance is given to the comment there in the previous awards. The comment in Award 709 to which reference is made is as follows:

"It would appear that under a fair and reasonable interpretation of this rule, the handling of a train order should include not only the physical process of passing it from hand to hand in the performance of its functions but also the work involved in its preparation. In the opinion of the Division the work of preparing train orders includes the making of additional copies as well as the making of originals * * *."

In the light of the matter which was then before the Division for consideration, the comment was proper and a fair statement, but it has no fixed application to such situations as are presented here. No attempt was made there to specifically define what was meant by **handling train orders** within the meaning of the rule. The evident purpose was only to name some of the incidents other than **copying** which came within the purview of the rule.

What was intended and what is the evident meaning of the Rule? Clearly the rule was intended to embrace every incident of handling train orders at the particular telegraph office or station from receipt to delivery to train crew. It excluded any phase of handling by any one not covered by the schedule before it came into the hands of the train crew.

The plain and simple fact here is that no single detail of handling train orders from inception of orders to the time they came into the hands of train crews was entrusted to any one not covered by the rule in question. The fact that a customary detail was dispensed with by the practice adopted and followed could not make of the practice a violation of the rule.

The claim should be denied.

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

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 carrier did not violate the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of May, 1942.