Award No. 1879
Docket No. TE-1905

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ALTON RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Alton Railroad, that the Carrier in requiring the agent-operator at Carrollton, Illinois, to place train order No. 230, dated May 21, 1941, addressed to Extra 2400, which he had received from the train dispatcher, in the waybill box on the outside of the station to be picked up by the train crew addressed after the agent-operator had been released for the day, violated the second paragraph of Rule 1 of the Telegraphers' Agreement and the operating rules of the Carrier relating to the handling of train orders by telegraphers at telegraph offices; and that the agent-operator shall be paid for a call on this day—May 21, 1941—on which he was thus deprived of this work that was his.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing the date February 16, 1929, 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 position of agent-operator at Carrollton, Illinois, is covered by said agreement.

The second paragraph of Rule 1 of the Telegraphers' Agreement, provides:

> "No employe 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 emergency in which case the telegrapher will be paid for the call."

The operating rules of the Carrier relating to the handling of train orders by telegraphers direct that train orders received by them shall be personally delivered by the telegraphers in such office direct to the train crews addressed.

On May 21, 1941, the agent-operator at Carrollton, Ill., whose assigned hours are 8:00 A. M. to 5:00 P. M., received a train order No. 230 from the train dispatcher addressed to the conductor and engineman of extra 2400, and as this train would arrive at Carrollton after the agent-operator was released at 5:00 P. M. for the day, the train dispatcher directed the agent-operator to place the train order No. 230 in the waybill box on the outside of the station to be picked up by the train crew of extra 2400, which was done.

CARRIER'S STATEMENT OF FACTS: Mr. W. C. Finfrock is regularly assigned as agent at Carrollton, Illinois, with hours from 8:00 A. M. to 5:00 P. M. Carrollton is the junction between the Godfrey Line and the

erators have always known it is permissible, and the established practice, to leave train orders in bill box when authorized or instructed by dispatcher. Such practice has been regularly followed when conditions required.

(Signed) E. E. Sutton.

Subscribed and sworn to before me this 23rd day of December, 1941.

(Signed) Alfred Dillon
Notary Public.

(SEAL)"

This Carrier is aware of the fact that there have been awards by your Board on the subject of the handling of train orders, in which the claims have been sustained, and which may be referred to by the Employes in their position in the instant case. The Carrier maintains, however, that such awards are not applicable in this dispute because of the facts, evidence and reasoning being dissimilar. More especially is this true because in the instant case the Carrier has shown that the rule relied upon by the Employes in support of their claim clearly contemplates that of necessity conductors must receive and handle train orders and are, therefore, eligible under the rule to handle train orders. Therefore, the handling of train orders as refered to in the second paragraph of Rule No. 1 has reference only to handling by **other** employes and places no limitation whatever upon any handling of train orders by conductors. The Carrier maintains it has also conclusively proved that the rule places no limitation whatever upon the **means or devices** used for the delivery of train orders so long as no employes other than telegraphers, dispatchers and train and engine service employes are involved in such handling. When the handling of train orders is so limited, no violation of the rule can be found. The Carrier maintains, therefore, that your Board should determine this case solely upon the facts, evidence and argument in this particular case without regard to other awards where the facts, evidence and argument are entirely dissimilar.

The Carrier has shown that the practice upon which the instant claim is based has been in effect without objection or protest for many years, long antedating any agreement with the Employes, and that it is not in violation of any of the specific provisions of the agreement rule referred to. The "Opinion" of your Board in Award No. 1636, Docket CL-1595, with Bruce Blake, Referee sitting as member of the Board, is particularly pertinent to this case and is quoted below:

> "In final analysis this dispute resolves itself into an effort by the Organization to require the Carrier to abandon a long existing practice * * *. That the practice had been of long standing when the first agreement between the Organization and the Carrier was executed is admitted. That there is no specific stipulation in the agreement proprohibiting continuation of the practice is admitted—or at least is perfectly clear."

Upon the basis of this "Opinion" the claim of the Employes was denied. The Carrier believes that the "Opinion of Board" quoted in this award exactly describes the situation existing in the instant case and believes that upon the same reasoning this claim is without merit and should be denied.

OPINION OF BOARD: All that we said in re Docket TE-1904, Award No. 1878 has application here, except in so far as the Carrier relies on Award No. 1821 recently announced, and that award is the only thing necessary to discuss in this case.

Referee Yeager in that award, with utmost sincerity, which we do not question, says he cannot subscribe to the acknowledged holding of the awards he cites, although admitting their analogy to that docket.

In that connection this referee has read with interest the memorandum of Dean Garrison, attached to his award in No. 1680 and without philosophizing further on the subject, he unhesitatingly exercises his prerogative in pointing out where he believes Referee Yeager fell into error in his opinion.

He says the decisions (1166, 1169, 1170 and 1422) "were predicated on a fallacious premise, and * * * the decisions, to the extent that they interpreted and applied the rule, were incorrect." He does not attempt to say what the "fallacious premise" was and the only deduction we can make is that he had in mind the major premise upon which the long list of awards rest, viz. the telegraphers **exclusive** right to all work covered by the agreement at his station. That is **the** premise in these cases, and when so considered, as it must be, it stands as a Gibralter upon which all of these cases must and can rest with security.

It is difficult to believe that Referee Yeager meant what he said when he used the language "It (the rule) excluded any phase of handling by any one not covered by the Schedule before it came into the hands of the train crew." If he meant that, it destroys the very protection the rule was intended to and does give to the Telegraphers, and sets at naught the long list of awards that have gone before.

We cannot change the effect of Award No. 1821 relative to the situation in that case, but we can by the award here re-establish the unquestioned line of authority interpreting the rule involved, and one of the things it prohibits is the "waybill box" method of evading the rule, which was what was attempted in the instant case.

The Carrier violated the second paragraph of Rule 1 of the Agreement and the claim must be sustained.

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 employe involved in this dispute are respectively carrier and employe 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 Rule 1 of the Agreement and the claim is sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1942.

DISSENT TO AWARD NO. 1879, DOCKET TE-1905

The error of this Award is so palpable as not to require demonstration, except that the omission of detailed reasons and the lack of distinguishment from the Awards cited in the Opinion of Board make it necessary to recite the details of the facts of the case, the reasons, and the distinctions from the cited Awards, which necessarily would have required a contrary decision.

This Opinion of Board, in its first paragraph, gives application to that which the Opinion of Board said in the immediate preceding Award, No. 1878, Docket TE-1904. Immediately, therefore, we point out that the same lack of detailed reasons and the same omissions, and the same lack of distinguishment from the cited Awards therein, apparent in Award No. 1878, are here apparent. The details in respect to those omissions are given in the Dissent to that Award, which also should be considered in respect to the statement in the first paragraph of Opinion of Board in this Award, No. 1879.

The Opinion of Board in this Award, having made its reference to Award No. 1878, then further declares that as the Carrier relies on Award No. 1821 recently announced "that award is the only thing necessary to discuss in this case." Thus this Award accepts the challenge of the latest preceding Award on the identical issue, which decision was the absolute opposite of the decision here reached.

Before proceeding to further reference to Award No. 1821, the Opinion of Board noted incidentally that the Referee had "read with interest the memorandum of Dean Garrison, attached to his award in No. 1680 * * *," from which at least it may be fairly assumed he considered the remainder of his opinion and decision not to be inharmonious therewith. That memorandum in its entirety deals with the controlling effect of precedent decisions, and although not so stated thus deals with the rule of "stare decisis." We are not competent, as laymen, to argue the correct technical application of that rule of law to the situation which Award No. 1821 presented to the Referee deciding the instant case. Notwithstanding the informal character of that memorandum attached to Award No. 1680, by reason of its exclusion from the Opinion of Board in the case to which it was appended, the expressions therein in their entirety, and in particular paragraph numbered 5, require the acceptance of Award No. 1821 as controlling in the instant case in whole contradiction of the acceptance of preceding contrary Awards which are again here adopted as reason for the instant decision without any detailed analysis or reason expressed to support such unfortunate and unwarranted action.

It is further submitted that it would have been impossible to have expressed sound reasoning to show why paragraph 5 of that memorandum, and the memorandum as a whole, justified the adoption of Awards preceding Award No. 1821 and discarded that latest preceding Award for the purpose of issuing one exactly contrary thereto.

That postulate is laid down for those whose interest in the conflict of these decisions will inspire their detailed study of them in order to form their own conclusions.

The Opinion of Board next, in the fourth paragraph, states why it presumed to over-ride Award No. 1821: It assumed that the "fallacious premise" in former awards, that offended the sincere convictions of the Referee rendering Award No. 1821, to be the premise in those former awards that the telegrapher had "**exclusive** right to all work covered by the agreement at his station." The Opinion then directly proceeds to declare, without reason at all, that such premise "stands as a Gibralter upon which all of these cases must and can rest with security."

That is arbitrary opinion and decision. Nothing follows in this Opinion of Board that gives one expression in detail related to the record in this case, to the Agreement between these parties, to the situation and practices in effect when this rule first was placed in their Agreement, and to the practices thereunder for 20 years and more until the instant case, which would justify this claim being sustained in defiance of all of that evidence.

What could be more arbitrary than to declare that the simple repose of copies of train orders in a box at the office where a telegrapher was employed, which orders had been placed in that box by the telegrapher, constituted a violation of that telegrapher's **exclusive** right to all work covered by the agreeat his station."?

The simple situation here is that if the box because of its convenience had been used with the train crew present they could immediately, or within twenty seconds, two minutes, or twenty minutes, as the situation required, have picked those orders out of the box, and not even the Referee who rendered this decision, or the Referees who have participated in any other of the decisions relating to handling train orders, would have declared that there was a violation because of the repose of the train orders in that box for those twenty seconds, two minutes, or twenty minutes. The single distinction from that which actually happened here is that these train orders thus reposed in the box until after the agent-operator concluded his tour of duty; at some time thereafter this train crew picked up the orders therefrom. It then can be concluded only that this Award holds that the repose of those orders for twenty seconds, twenty minutes, two hours or any time after this telegrapher went off duty is work to the exclusive right of which, by former Awards overruled by Award No. 1821, the agent-operator in the instant case was entitled to.

But in addition, to show that such unwarranted decision came either as a neglect or a disregard of all that was in evidence in the record that would have led to a proper decision in this case, there is briefly reviewed the elements that did appear, which because of their particularity of circumstance relating to the known condition upon which the Agreement here involved was negotiated, i. e., the practices before, during, and after the negotiation of this Agreement, should have but led to confirmation and emphasis of the substantial character of Award No. 1821. These were:

(1) Prior to negotiation of the Agreement, the practice in handling train orders was, as in the instant case, in consonance with the Standard Code of Association of American Railroads Rules 211 and 217 (particularly the latter as discrediting the adamant meaning given "handling" in the certain overruled Awards preceding Award 1821).

(2) The practice to leave orders to be picked up, as in the instant case, has been in effect since the first Agreement on this property, effective September 1, 1912.

The practice continued unchanged and unprotested until and at the time this involved rule was first put in the Agreement, i. e., the Agreement effective October 1, 1918; it continued unchanged and unprotested as successive Agreements, to and including the current Agreement, were negotiated.

Testimony as to this practice continuing at least since the year 1907 is given by the chief dispatcher, an officer who since that year has been in most competent position to testify and whose testimony stands unrefuted in this file.

(3) The soundness of the decision in Award 1821 on the question presented by the instant case will be confirmed by a review of the files in all of the cases which have heretofore borne upon the same question, and particularly those which gave the history of the development of the involved rule. Those files in turn give reference to preceding Awards of the Division heretofore cited in the instant record. These key files are:

> First, Award 1169, Docket TE-1066, being one of the three Awards on Santa Fe Railroad cases overruled by Award No. 1821: In that record (Award No. 1169) is given complete history of the negotiation of the involved rule and the practices on that railroad incident to and continuing after the adoption of the rule, which there stemmed from United States Railroad Labor Board Decision No. 757, March 3, 1922. References to the more complete file of Award 1169 were made in the files of Awards 1166 and 1170, as were references in each of them to previous decisions of this Board and the former United States Railroad Labor Board.

Second, Award No. 1821, Docket TE-1752: This dispute was handled before the Division concurrently with and immediately following Award No. 1820, Docket TE-1751, in which latter file there was included by the Carrier Representative of the Board presenting the case to the Referee a recitation of the genesis of the involved rule which in those two Wabash Railroad cases also last stemmed from United States Railroad Labor Board Decision No. 757.

The Santa Fe Railroad, involved in Award No. 1169 and other Awards on this question, and the Wabash Railroad, involved in Award No. 1821, were two of the seventy-one railroads, parties to Decision No. 757.

The distinction in respect to the historical ground-work of the involved rule in the instant case on the Chicago and Alton Railroad, which but gives emphasis to the virtue of Award No. 1821, was that this rule had been in effect on the Chicago and Alton Railroad for a period of 4 years before United States Railroad Labor Board Decision No. 757 was rendered, i. e., since October 1, 1918, when these parties, by mutual agreement, placed it in the revision of their Agreement made effective on that date, October 1, 1918.

The Chicago and Alton Railroad was not a party to the dispute covered by Decision No. 757. The rule adopted by the railroads covered by that dispute was a duplicate of that already in existence on the Chicago and Alton. The understanding which the parties had on the Chicago and Alton had existed prior to the rendition of Decision No. 757, was not disturbed by the issuance of the decision, and continued with the meaning disclosed and not discredited by the file in this case, and not even questioned until the institution of the instant dispute. That meaning is that which the Carrier had always given in its application when it was found desirable and expedient, as in the instant case, for the operator at a telegraph office to leave train orders which he had copied and completed in the box to be picked up by the train crew after the operator had finished his tour of duty.

Award No. 1821, with all of the history relating to the negotiations throughout and subsequent to the period of Federal control culminating in United States Railroad Labor Board Decision No. 757, establishing a rule of duplicate meaning and purpose to the rule which then existed in the Chicago and Alton Agreement, should inevitably have been accepted as confirmation unassailable of the meaning of this rule as it has been given application on the Chicago and Alton Railroad since its inception October 1, 1918.

(4) The practice under the present Agreement in respect to the handling of train orders, of which complaint was made in this case, had continued unprotested and unchanged until the institution of this instant dispute. This claim was a request for a new interpretation, which meant a new rule, and was thus a request which under the authority of this Board could not be sustained.

Respectfully it is suggested that if Award No. 1821 is to be set aside, this Award, which did cast it aside, should have given detailed reasons why there was substituted older Awards of a "long list" assumed to contain the "fallacious premise" referred to in Award No. 1821 and asserted here to be "the premise" of the telegrapher's "**exclusive** right to all work covered by the agrement at his station" before there was rendered such an arbitrary and unreasonable decision that the simple repose of copies of train orders in a box constituted work which was the exclusive right of the telegrapher at the station here involved.

This Award stands condemned by any proper interpretation of the involved rule of the Agreement, as well as by the rule of reason.

/s/ C. C. Cook
/s/ R. F. Ray
/s/ C. P. Dugan
/s/ A. H. Jones
/s/ R. H. Allison