

Award No. 2087
Docket No. TE-1959

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
DENVER AND RIO GRANDE WESTERN RAILROAD
COMPANY

(Wilson McCarthy and Henry Swan, Trustees)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, Denver and Rio Grande Western Railroad, that W. A. Fentress, regularly assigned as telegrapher at Kyune, Utah, shall be paid calls for July 26, August 7, August 8 (2) and August 9, 1941, and for each subsequent instance when train orders for trains at his station have been, at a time of day when Kyune office was closed, delivered at his station to the crews addressed by employees not covered by the Telegraphers' Agreement.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date January 1, 1928, as to rules of working conditions and August 1, 1937, as to rates of pay, Re-issue December 1, 1939, is in effect between the parties to this dispute.

At Kyune, a main line station, two telegraphers are employed, assigned hours 5:00 P. M. to 1:00 A. M. and 1:00 A. M. to 9:00 A. M., providing sixteen hours' train order and telegraph service.

Helper, a main line station, employs three telegraphers, providing twenty-four hours' train order and telegraph service.

Kyune is 12.8 miles west of Helper.

Effective with the discontinuance of one telegrapher position at Kyune, train orders governing the movement of helper engines from Kyune to Helper, at a time the Kyune telegraphers are not on duty and after helper service has been performed Helper to Kyune, are transmitted by the train dispatcher to a telegrapher at Helper, thence transported Helper to Kyune, and delivered to the addressees, by a train crew other than the one to whom the orders are addressed at Helper. Similar train orders, during the assigned hours of the Kyune telegraphers, are transmitted to and delivered by them.

POSITION OF EMPLOYEES: The following rules are contained in the Current Agreement:

RULE 1—SCOPE

"This Contract will govern the employment and compensation of Telegraphers, Telephone Operators (except Switchboard Operators), Agent-Telegraphers, Agent-Telephoners, Levermen, Tower and Train

Attention of the Board is further called to Operating Rule 210, reading:

"210. When a train order has been transmitted, operators must, unless otherwise directed, repeat at once from the manifold copy in the succession in which the several offices have been addressed. Each operator receiving the order shall observe whether the others repeat correctly.

"When the order has been repeated correctly by an operator, the response 'complete' and the time, with the initials of the Chief Dispatcher, will be given by the train dispatcher.

"The operator receiving this response will then write on each copy, the word 'complete,' the time, and his last name in full, and personally deliver a copy, with a clearance card, to each person addressed, and a copy to the rear trainman, except when delivery to the engineman or rear trainman will take the operator from the immediate vicinity of his office, all copies will be delivered by the conductor or brakeman.

"Each train must receive a clearance card with all train orders, and they must see that it is properly addressed to their train, correctly date, and that they receive all orders shown on the clearance card."

This is a standard rule, was in effect at the time the agreements of 1917, 1924 and 1928 were negotiated, was fully known to the employes at the time the agreements were negotiated and provides that train orders, under certain conditions, will be delivered (handled) by the conductor or brakeman. Both parties to the agreement having a knowledge of the provisions of this rule which had been in effect for years prior to the agreement of 1917 and such rule and practice continuing in effect for twenty-five years after the agreement of 1917, with full knowledge by the employes throughout this period, indicates clearly that the provisions of the rule were accepted by the employes as right and proper and was a part of the understanding and intent of the parties to the various agreements negotiated during this period.

The Carrier submits that a consideration of all the evidence, the previous conduct of the parties, and the practical and economic considerations bearing upon the meaning of the agreement and its application to the facts, fully sustains the Carrier's position, and respectfully requests that the claim be denied.

OPINION OF BOARD: At Kyune, Utah, there are two telegraphers employed between the hours of 9:00 A. M. and 5:00 P. M. The claim is that the telegrapher should be paid for calls on the dates in question for train orders delivered at Kyune when no telegrapher was on duty. There is a steep grade between Helper, Utah, and Kyune, making it necessary to have an extra engine to assist the trains up this grade. When the extra engine reaches Kyune, it then returns to Helper. The form of the order issued is as follows: "To C&E Eng.—C&E Eng.—at Kyune care of Cond. Extra—West at Helper."

Petitioners, to sustain their claim, rely upon Rule 2 which is as follows:

"Rule 2—HANDLING TRAIN ORDERS

"No employes other than covered by this Contract and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where a telegrapher 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 rule is clear and unambiguous, and "The awards with uniformity have held that the words in the rule 'handle train orders' mean something more than 'copy train orders' and that there is a breach of the rule if the orders, after having been copied by the telegrapher, are entrusted for delivery to someone not included within the class covered by the agreement. One of the most frequent examples of such a violation is where orders are given to one train crew to be delivered to the train crew which is to execute them. Awards 86, 1096, 1167, 1168, 1170, 1304, 1456." Award No. 1489. See, also, Award No. 1878.

The Carrier contends that under the facts in this claim, the orders in question were not delivered to someone outside of the agreement to be delivered to the employees who were to execute the orders. This assertion is based upon the fact that the telegrapher delivered the orders to the conductor of the train at Helper, and, therefore, all the train crew who had to have train orders had them before the train left Helper. Carrier contends in effect it was an order for a round trip and contends this claim is governed by Award No. 1489.

The facts in Award No. 1489 are that at the conclusion of the work on the nights of August 14 and 15, locomotive crane (No. 95238) tied up at Billings, Oklahoma, and the conductor then drove to his home at Enid, Oklahoma, and spent the night. In both instances, the orders were for this conductor and covered his authorization for work on the main tracks at or near Billings during the day, and were delivered, in effect, by the telegrapher at Enid. Petitioners contended the telegrapher at Billings should be paid a call for these two orders because they were to be executed at Billings.

The claim was denied for the reason that under the rule (same as Rule 2) there is nothing requiring train orders to be handled through one station rather than through another. In other words, the order was delivered by the telegrapher to the conductor in charge of the train that was to execute the order; and, therefore, the Carrier did not violate the agreement.

The facts in Award No. 1489 are distinguishable from the facts in this claim. In Award No. 1489, the telegrapher delivered the orders to the conductor of the train that executed them, while under the facts here, the telegrapher delivered the orders to the conductor of the train at Helper, and after the helper engine reached Kyune, it became another train on its return from Kyune to Helper, even though it was manned by the same employees.

Among many other awards, the employees rely principally upon Awards Nos. 1167 and 1456. Judge Thaxter distinguished the fact in those awards from the facts in Award No. 1489, but did not overrule these awards. Neither did Judge Bakke overrule Award No. 1489, but he did distinguish that Award from the facts in Award No. 1878.

Award No. 1167 concerned the duties of the telegraphers at two stations, Coffeyville and Cherryvale, Kansas. The train No. 73 arrived at Coffeyville before the telegrapher came on duty, and left Coffeyville as train No. 74 after the telegrapher ceased to be on duty. The orders were delivered by the telegrapher at Cherryvale, not only covering the trip from Cherryvale to Coffeyville, but for the return trip from Coffeyville to Cherryvale, in the latter case being addressed "to train No. 74 at Coffeyville." It was held this was an operation of two trains and this practice was a violation of the rule. (Same as Rule 2.)

Award No. 1456 concerned train orders for the return of a helper engine which assisted a train from Richmond to Glenn Frazier. The orders were directed to the engineman of the helper at Glenn Frazier, and were delivered by the telegrapher at Richmond to the conductor of that train. This was held to be a violation of the agreement.

From the record, it is to be inferred the conductor who received the orders at Helper continued on with that train after it arrived at Kyune, and did not return to Helper on the extra engine.

This Referee is unable to distinguish the facts and rules in this claim from Awards Nos. 1167 and 1456, and, therefore, on authority of those awards, concludes this claim should 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 there was a violation of the current agreement as contended by the petitioners.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 5th day of March, 1943.

DISSENT TO AWARD 2087, DOCKET TE-1959

The Opinion of Board in this Award, after reviewing various former Awards by this Division, asserts its reliance for decision upon two of such former Awards, which two Awards notably will be found to have improperly given expanded and unintended meaning to the rule (Rule 2), which again is here involved.

In the instant case there was a literal compliance with Rule 2, "Handling Train Orders." The train orders involved were handled by a telegrapher on duty at an open telegraph office. This telegrapher then delivered the train orders to the conductor addressed at the office at which he (the telegrapher) received the train orders from the train dispatcher.

The trains in question were extra trains which included helper engine assistance to an intermediate point, at which the helper engine cut out and returned light to initial terminal.

The orders were a dual form of order in that they authorized the extras to operate terminal to terminal and the helper engines to operate light from an intermediate point, Kyune, back to the initial terminal, Helper. The conductors on receiving the orders at the initial terminal before departure therefrom made delivery to the engineers in charge of the helper engine attached to their trains. The engineers, therefore, received their orders authorizing the light movements, Kyune to Helper, at Helper before departure therefrom.

There is no rule to be found in the Agreement requiring train orders to be handled through one station rather than through another, as was held in denial Award 1489. In commenting on Award 1489, the Referee in this Award (2087) states:

"The facts in Award No. 1489 are distinguishable from the facts in this claim. In Award No. 1489, the telegrapher delivered the orders to the conductor of the train that executed them, while under the facts here, the telegrapher delivered the orders to the conductor of the train at Helper, and after the helper engine reached Kyune, it became another train on its return from Kyune to Helper, even though it was manned by the same employees."

The fact that the Award assumes this helper engine "became another train" evidently then becomes the reason why the Award relies upon other unsound Awards for its decision. Whether or not the helper engine on that portion of its trip from Kyune to Helper became another train provides no foundation, under the Agreement existing between the parties to this dispute, for this Division to assume to declare that the handling of orders for this helper movement, as it was done at the initial point of movement, Helper, constitutes a violation of the Agreement.

The Award also ignores entirely the prescribed method of handling train orders on railroads down through the years, antedating the first agreement with the Telegraphers' Organization, and the continuation of such handling through each successive negotiation of agreements with the Telegraphers' Organization.

The Award is based on former Awards built on a false premise rather than on sound reasoning. See dissent to Award 1456.

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