

Award Number 3114
Docket Number TE-3089

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD CO.

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Delaware, Lackawanna & Western Railroad Company, that Operator D. W. Plant, regularly assigned at Newton, New Jersey, with hours 8:00 a.m. to 5:00 p.m. and an allowed meal hour, shall be paid for a call under Rule 5 of the Telegraphers' Agreement, account the conductor of Train No. 1024 copying train order No. 3 at Newton at 6:53 a.m. on May 6, 1944, at a time of the day when Operator Plant was not on duty and was not called or used to perform this work that was his.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of May 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

On May 6, 1944, 6:53 a.m., train order No. 3 addressed to C. & E. No. 1024 at Newton was transmitted directly to Conductor Foster in charge of said Train No. 1024 by the train dispatcher. Train No. 1024 (eastbound) is time-carded to leave Newton at 7:00 a.m. and the second telegraph office east, Andover, at 7:10 a.m. Between Newton and Andover is located Andover Junction which maintains twenty-four hour telegraph and telephone service. Andover maintains telegraph service 7:00 a.m. to 4:00 p.m. with one hour out for lunch.

D. W. Plant, Clerk-Operator at Newton, is regularly assigned 8:00 a.m. to 5:00 p.m., one hour out for lunch, lives approximately seven minutes from his place of employment, maintains a telephone in his home, complied with Operating Rule No. 743, which requires that where there is no relieving operator operators must place a card in the depot window showing where they can be located, and was at home available for service at the time the train order was transmitted.

POSITION OF EMPLOYEES: As indicated in the Employees' Statement of Facts, at 6:53 a.m., May 6, 1944, train order No. 3, reading:

"Signal at east end of Andover siding out of order. Proceed as per Rule 509-C without flagging."

addressed to C. & E. Train No. 1024 (eastbound) at Newton was transmitted by the train dispatcher directly to Conductor Foster who was in charge of said train. As further indicated hereinbefore regular telegraph and telephone service is maintained 8:00 a.m. to 5:00 p.m. at Newton, with one hour out for

disposition of it on the merits is to deny the claim and remand the case to the Property for such negotiation as the parties may desire to conduct.

"To adopt the practice of broadening or extending the terms of any instrument by a tribunal such as ours will only lead to confusion and uncertainty and ultimately to injustice and hardship to both employes and carrier. Far better for all concerned is a course of procedure which adheres to the elemental rule, leaving it up to the parties by negotiation or other proper procedure***."

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When it is borne in mind that the Organization is presently attempting to negotiate a rule calling for the payment of a call in cases such as this, there can be no doubt that the proper disposition of this case is that indicated by the Carrier.

A plethora of authority supports the Carrier's position. See Awards: Telegraphers: 367, 368, 383, 389, 603, 645, 652, 653, 654, 700, 1008, 1078, 1145, 1290, 1320, 1396, 1397, 1400, 1488, 1553, 1567, 1568, 1606, 1821, 1822, 1876, 2090.

Other Organizations: 196, 405, 481, 615, 635, 782, 806, 877, 890, 947, 948, 1038, 1050, 1116, 1134, 1149, 1217, 1383, 1405, 1406, 1418, 1435, 1458, 1484, 1519, 1554, 1593, 1656, 1694, 1695, 1708, 1841, 1849, 1894, 1991, 1999, 2010, 2011, 2041, 2042, 2089, 2090, 2091, 2121, 2133, 2134, 2138, 2145, 2326, 2334, 2350, 2351, 2353, 2375, 2379, 2449, 2492, 2493, 2548, 2551, 2552, 2576, 2597, 2685, 2693, 2641, 2674, 2676, 2735.

The claim should be denied.

OPINION OF BOARD: The facts are fully stated above and need not be here repeated. The question presented is whether train orders may be copied by an employe not under the Telegraphers' Agreement, without subjecting Carrier to the payment of a call to an employe under the Agreement, who is available for that service. Brotherhood relies upon Rule 1 (Scope Rule), Rule 5 (Call Rule), and Rule 12-A. We see no relevancy of Rule 12-A to the present dispute and shall confine our consideration to Rules 1 and 5.

Carrier asserts that the Scope Rule is not an all-inclusive rule and that Brotherhood is in error in contending that only employes listed in the Scope Rule are permitted to use the telegraph or telephone in railroad work. It further contends that there is no specific rule in the present Agreement governing the handling of train orders such as is found in the majority of agreements between other carriers and Brotherhood, which rule (hereinafter designated Train Order rule) is in substance as follows:

"No employe other than 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 employe will be paid for a call."

Our discussion here need not embrace the broad issue whether all telephone communications are covered by the Scope Rule. We confine our determination to the narrow issue here involved whether train orders may be copied by employes not within the Agreement. In view of what happened on the property in a companion case, we do not believe that Carrier is now in a position to assert that copying train orders is not work belonging to employes under the scope of the Agreement. As we point out in Award 3116, Carrier conceded on the property that there was a violation of the Agreement when train line-ups were copied by employes not within the scope of the Agreement. We there quoted a letter by Superintendent of Carrier to General Chairman of Order of Railroad Telegraphers which in part stated:

"The general practice of permitting maintenance of way employes to obtain line-ups through other than the regular station forces within the scope of the telegraphers agreement is not authorized."

Other statements of Carrier are quoted in the opinion in that case which we find unnecessary to repeat here as the docket is made a part of this opinion by reference.

If copying train line-ups is unauthorized, as Carrier seems to have conceded on the property, it follows that copying train orders is equally unauthorized. Aside from these admissions by Carrier in this matter, there is, in awards of this Division, authority for the proposition that work of this nature belongs to employees under the Agreement. Award 1983 involved telephone conversations of track-walkers with dispatcher. Although the claim there was denied because no record was made of the conversations, some pertinent statements are made therein which are applicable here. The Award there quoted with approval a statement from the United States Labor Board as follows:

"Thus, it is law by order and contract that employees whose duties require the transmitting and/or receiving messages, orders and/or reports of record by telephone in lieu of telegraph are properly classified as working under the Telegraphers' schedule and such duties belong exclusively to that class."

This Board then went on to say:

"We think this is as accurate a statement as appears anywhere on the issue before us. It will be noted that before the item of work became exclusively the property of the telegraphers under the scope rule that the items must be 'of record' which means that the conversations are important enough in the operation of the railroad to be made matters of record. The best example of this is in relation to transmission of train orders. (Emphasis supplied).

The Board in that case further pointed out that if there had been a record the claim would have been sustained. Award 1720 is also authority for the conclusion herein reached. While in the agreement in that case there was a specific Train Order rule and the carrier discussed this rule in its submission, the case was not decided on the basis of the presence of the rule but rather on the theory that the work was within the scope rule of the agreement. See also Award 2934.

As we see it, because the Train Order rule is not in the present Agreement, does not mean that Carrier can, without violating the Agreement, delegate work of the character here involved to employees not covered. We are not in a position to know the reason for the inclusion of the Train Order rule in the various agreements. Carrier suggests that it constitutes an admission by Brotherhood that the scope rule does not cover the situation. Brotherhood on the other hand contends it is a rule which restricts the scope rule and is intended to cover the subject of emergencies. Whatever may have been the reason, we cannot agree that in the absence of such a rule in the Agreement, train orders may be written by employees not covered thereby.

It has been held in numerous awards of this and other Divisions, that work of a class covered by the scope rule of an agreement, belongs to the employees upon whose behalf it was made and cannot be delegated to others without violating the agreement. Awards 1273, 1535, 2934, (Third Division) and 2172 (First Division).

Carrier also contends that the record does not show availability of employee in what it claims to be an emergency. Employee had a telephone in his home and Carrier knew how to reach him. The facts indicate that if the train order had been handled under the Agreement there was sufficient time to have called employee without causing delay to Carrier's trains.

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 Employees 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 the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 1st day of February, 1946.