

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Pennsylvania Railroad Company;

(1) that the carrier violated the terms of the current Telegraphers' Agreement when on February 17, 1947, it permitted and/or required employees at New Brunswick Passenger Station not covered by such an agreement to copy train orders No. 23 and 27 by telephone for train No. 3833; and

(2) that the qualified extra employee entitled to have performed such work shall be paid a day's pay under the provisions of Article 5, Section 2(a) and Article 6, Section 4 of the Telegraphers' Agreement as a result of being deprived of this work.

EMPLOYES' STATEMENT OF FACTS: On February 17, 1947, to expedite the movement of Train No. 3833, the Division Operator located in Jersey City, N. J., telephoned Train Order No. 23 at 5:07 P.M. to the Conductor of this train at New Brunswick Passenger Station; and again at 5:18 P.M. the same date, the Division Operator telephoned Train Order No. 27, to the Agent (Kohler), at New Brunswick, N. J., who is an official Agent outside the scope of the Telegraphers' Agreement, who then delivered the train order to Train No. 3833 at this Passenger Station.

POSITION OF EMPLOYES: There is an Agreement in effect between the parties, Regulations and Rates of pay effective May 16, 1943, with necessary adjustments to be added.

The Agreement is divided in two Parts. Part II which governs Telegraph Department employees, and covers in this instant case.

Telegraphers' Agreement, Part II, May 16, 1943, specifies:

SCOPE

"The provisions set forth in Part II of this Agreement shall constitute an Agreement between The Pennsylvania Railroad Company and its employees of the classifications herein set forth, represented by The Order of Railroad Telegraphers, and shall govern the hours of service, working conditions and rates of pay of the said employees in the positions classified herein." (Emphasis ours)

of agreements concerning rates of pay rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that under the circumstances set forth herein, the copying of a train order at New Brunswick Passenger Station by the Agent, in an emergency situation, did not constitute a violation of the applicable Agreement and, therefore, the Claimant is not entitled to the compensation which he claims.

It is, therefore, respectfully submitted that the claim is without foundation in the Applicable Agreement and should be denied.

OPINION OF BOARD: On February 17, 1949, to expedite the movement of Train No. 3833, the Division Operator located at Jersey City, N. J., telephoned Train Order No. 23 at 5:07 P.M. to the Conductor of this train at New Brunswick Passenger Station; and again at 5:18 P.M. the same date, the Division Operator telephoned Train Order No. 27 to the Agent at New Brunswick, N. J., an official Agent outside the Scope of the Telegraphers' Agreement. Train Orders were copied and delivered at New Brunswick, N. J.

The Employees contend that under their effective Agreement of May 16, 1943, with the Carrier that they were entitled to this work and that the Carrier should have called an extra telegraph employee to perform this work. The Employees contend that similar cases have arisen at stations where a telegraph employee was off duty, or not employed, and that these cases many times were adjusted on the property. The Employees state that, even though the Carrier justifies the performance of this work by employees outside of the Telegrapher's Agreement by calling the happenings at New Brunswick on February 17th an emergency, the word "emergency" does not appear nor is it a part of the Telegraphers' Agreement, Part II. The Employees state that the Carrier did not attempt to call an extra employee and therefore could not know whether one was available.

The Carrier contends that Train No. 3833 became totally disabled at New Brunswick Passenger Station, a point where no Block Operator is employed; that this disablement created a serious condition at the peak of the passenger movement through this point and necessitated immediate action. The Agent at New Brunswick was obliged to copy a Train Order for delivery to the crews of Trains Nos. 3833 and 3780. The Carrier states that in an emergency it has the right under the Agreement to have employees outside of the Telegraphers' Agreement perform this work; that the performance of the work was completed between 4:50 P.M. (the time the train became disabled) and 5:07 P.M. (Order No. 23) and 5:18 P.M. (Order No. 27). The Carrier stated that the list of qualified extra employees shows that, from where the extra employees lived, it would have taken at least one hour for the extra employee to reach New Brunswick to perform this work. The Carrier admits that no extra employee was called.

The Employees rely upon Rule I (Scope), Article V, Section 2 (Hours of Service), and Article VI, Section 4 (Division of Extra Work).

The question before this Board is whether or not the qualified extra employee is entitled to this work in an emergency under the Agreement. The Scope Rule clearly shows that under normal conditions, this class of employee is entitled to the work and that the Carrier should have called one of the employees from the extra list. The question of the emergency that the Carrier raises is not defined, or excepted by the effective Agreement between the

parties, as it is in some other Agreements, and this same question has been settled by other Awards of this Division, and the same contract and the question of emergency arising thereunder has been settled by Award 4089.

The Carrier claims that an extra employe was not available to perform the work in the time necessary to perform said work. This contention of the Carrier cannot be accepted by the Board due to the fact that the Carrier failed to call any extra employe.

From the facts of this record the claim will 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 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: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of July, 1950.