Award No. 5081
Docket No. TE-5105

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHESAPEAKE & OHIO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chesapeake & Ohio Railway Company,

(a) That the Carrier violated the Scope Rule of the Telegraphers' Agreement when, on February 6 and 27, 1948, it permitted or required the conductor of train No. 90, an employee not under the Telegraphers' Agreement, to copy train orders and a message by telephone at Big Shoal, Kentucky, a point where no telegrapher is employed; and

(b) That as a consequence the Carrier shall pay the senior extra telegrapher idle on the district on each of these days, a day's pay of eight hours at the minimum telegrapher rate for each day for this work of which he was deprived.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date October 16, 1947, as to rates of pay and working conditions is in effect between the parties to this dispute.

On February 6, 1948, at 6:28 P.M., Conductor Barber of local freight train No. 90, an employe not under the Telegraphers' Agreement, received and copied train order No. 90 by telephone at Big Shoal, Kentucky, and delivered a copy of same to his engineer. At the same time Conductor Barber received a message of record by telephone.

Again on February 27, 1948, at 8:09 A.M., Conductor Barber of local freight train No. 90, an employe not under the Telegraphers' Agreement, received and copied train order No. 116 by telephone at Big Shoal, Kentucky and delivered a copy of same to his engineer.

Big Shoal is a blind siding, a point where no telegrapher is employed.

Claim was filed for a day's pay for the senior idle available extra employe on each of these days who was thus deprived of this work. Both claims were declined by the Carrier.

POSITION OF EMPLOYES: The Scope Rule of the prevailing Telegraphers' Agreement which embraces telegraphers and telephoners and the work performed by them in those classes of employment, is invoked in this dispute.

Rule 9 of the Telegraphers' Agreement, providing as follows, is also invoked in this dispute:

All of this can lead to but one conclusion; that the employes through this claim are attempting to have your Board, by an award, write into the agreement a new rule. Put more bluntly, the employes are attempting to secure through an award in this case the provisions of the portion of Rule I which was not agreed to in the negotiations leading up to the mediation agreement and the present rules effective October 16, 1947.

The principle that it is not the function of your Board to write new rules is too well known to require discussion here. That the claim in this case, if allowed, is tantamount to the writing of a new rule is abvious from the single fact that the employes sought to do away with Rule 58 in recent negotiations and have a modified rule included in the scope rule. If what is here contended is encompassed by the scope rule, there would clearly have been no purpose in the request for inclusion of the following language:

> "(d) Only employes covered by this agreement shall be required or permitted **to handle train orders** or clearance cards, or to report or block trains or to transmit or **receive by telephone** or telegraph; **train orders**, clearance cards, messages, train lineups, reports of record, or other information at stations where an employe covered by this agreement is employed, except in case of extreme emergency, in which event the employe at such station shall be notified and paid a call.
>
> **If such service is performed AT OTHER POINTS by employes not covered by this agreement, the senior idle extra employe shall be notified and paid a minimum of one day's pay for each violation."** (See Carrier's Exhibit "B").

Hold that request up against the present case involving copying the orders at Big Shoals. Big Shoals under the proposed rule, would have been one of the "other points". This claim asks a minimum day for the senior idle extra employe, and fits exactly the provisions which were requested in the rule negotiations.

The Carrier submits that the evidence is overwhelmingly to the effect that under the current rules it was intended that Rule 58 govern in the matter of handling train orders, and the Carrier has complied with that rule. It is equally apparent that the employes here seek a new rule, something outside the function of your Board under the provisions of the Railway Labor Act. For these reasons this claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The principles involved in this claim in respect to the governing rules are identical with those in Award 5079, and there appearing no material distinguishing facts of record, the Board holds that the agreement was not violated at the time, place and under the facts and circumstances of record, and the claim should be denied.

There may be in this case, however, an implied threat to the security of the Organization which merits comment. There has been noted a reoccurrence of the same act on February 27, 1948, which gives rise to the first claim for an alleged violation on February 6. In Award 5079 we were dealing with an isolated situation under circumstances peculiar to that case. The interpretation in that case placed on Rule 58 is not intended that the rule may be employed to weaken or defeat the Organization. Where repeated reoccurrences of a practice fix a pattern of regularly transmitting, receiving and copying train orders at a particular location, the writter of this opinion believes that the rule set forth in Award 604, and those of similar import would govern.

As long as the Carrier has within its power the right to discontinue a telegraph position when work of that position ceases to exist, it must be held under a reciprocal duty to reestablish old positions abolished and to establish new ones where a need arises.

That such views are in line with the parties' thinking, though, and should not influence a decision in this case is demonstrated by the fact that on March 22, 1937, the Carrier and the Organization entered into an agreement establishing some 39 positions in the coal fields where train orders had previously been copied by train crews.

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 Employes 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 facts of record do not disclose a violation of the agreement.

Claim denied.

AWARD

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of October, 1950.