

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
FLORIDA EAST COAST RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Florida East Coast Railway that:

1. the Carrier violated the provisions of the Agreement when and because beginning on May 29, 1949, it blanked the first trick operator-clerk position at Buena Vista Yard Office, Miami, Florida, on Sundays, and diverted the work embracing this position on Sundays; first, to employees outside the Agreement, and second, to an employee under the Agreement but at a different office, and;

2. the Carrier, because of this violative action, shall now compensate the incumbent of the first trick operator-clerk position, Buena Vista Yard Office, under the Rest Day "Call" rule of the Agreement, for each day upon which said incumbent was deprived of this work which was rightfully his under the Agreement.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing a date of August 1, 1948, is in effect between the parties.

Prior to May 29, 1949, there were three tricks classified as clerk-operator at Buena Vista, Florida yard office. These positions worked three eight-hour shifts around the clock 24 hours each day in the week.

Commencing Sunday, May 29, 1949, the Carrier, acting alone, ordered the first trick position of operator-clerk at Buena Vista Yard Office to work daily except Sundays and on this same date the following message of instructions was handed to the operators at "MX" telegraph office located in the Miami Passenger Station:

"On each Sunday immediately after No. 7 has arrived at Miami Passenger station, you should get an overdue order on first class trains and any run late orders on afternoon passenger trains if such trains are late for the yardmaster at Buena Vista, placing them in an envelope and addressing it to the yardmaster at Buena Vista."

The Organization made claim that there was still work to be performed on first trick at Buena Vista and that any train orders for that point should be handled by the incumbent of the first trick clerk-operator position at that office and that he should be brought out under the call rule of the Telegraphers' Agreement on Sunday to properly handle this train order work belonging at Buena Vista.

information of yard crews in the Terminal and not for execution by them and consequently were in no different category than information copied by telegraphers and sent by messenger not covered by the Telegraphers' Agreement, to the offices of the Superintendent, trainmasters, yardmasters, etc., day in and day out. Consequently, as has been shown in Item No. 2, Carrier's Position, regardless of how Rule 26 may be distorted, it cannot logically be found that the "messaging" of this information between May 29 and October 2, 1949 from Miami where it was copied by a telegrapher to Buena Vista Yard Office and placing it on a hook there by employees not covered by the Telegraphers' Agreement constituted a violation of that Rule. If these conditions were not present, however, there still could not be found in Rule 26 any support for the contention that it has been violated since October 9, 1949 by having the telegrapher who copies the information at Miami on Sunday "messenger" it to Buena Vista Yard Office and place the copies on the same hook the first trick Clerk-Operator at Buena Vista did prior to May 29.

Rule 26 does not provide that no employee other than covered by this schedule and assigned to the station involved and Train Dispatchers will be permitted to handle train orders at telegraph and telephone offices where an operator is employed and is available or can be promptly located, etc., instead it plainly and explicitly provides "No employee other than covered by this schedule and train dispatchers" will be permitted to do it. So long, therefore, as a train order for an office at which a telegrapher is employed is handled by any telegrapher, Rule 26 provides nothing for the telegrapher assigned at that office and it cannot be made to read otherwise except by the inclusion of language it plainly and explicitly does not contain, or as the Third Division said in its Opinion in Award 1489:

"The rule in question is clear and explicit and we find in it nothing which requires that train orders shall be handled through one station rather than through another. The rule governs."

5. In summary, no part of the present claim is supported by any agreement rule or practice on this Railway, nor can any part of it be properly sustained on authority of any Award of the Third Division issued in settlement of a dispute on another railroad involving rules and circumstances not identical with the present case. No train orders were delivered on the Sundays involved to trains. The overdue and run-late orders on passenger trains copied on such Sundays by the first shift telegrapher at Miami Passenger Station, a telegraph office in the same terminal as Buena Vista, were for the information of yard engine crews going on duty at Buena Vista and not for execution. Such copies were not delivered to the yard engine crews on such Sundays by anyone, but were placed on the hook in the Yard Office provided for that purpose just as the first shift Clerk-Operator at Buena Vista did on Sundays prior to May 29, 1949 and exactly as he does on every other day of the week.

The claim, therefore, has no basis in fact or any rule of the Agreement and should be denied.

All of the matters cited and relied upon by the Railway have been discussed with the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization claims that the Carrier violated its Agreement when on May 29, 1949, it blanked the first trick telegrapher's position on Sundays at Buena Vista Yard and delivered the work first to employees outside the Agreement and later to an employee within the Agreement, but at a different office.

There are two telegraph offices in the Miami-Buena Vista Terminal, one at Miami passenger station and the other at the Buena Vista Yard office. The two offices are about 2.4 miles apart. All yard crews working throughout the terminal go on and off duty at Buena Vista Yard. All train orders and clearance cards for passenger trains originating at Miami are copied and delivered to addressees by the telegrapher on duty at the passenger station. Train orders and clearance cards for freight trains originating at Buena Vista were copied and delivered at that point. On and subsequent to May 29, 1949, no freight trains originated at Buena Vista during the first trick telegrapher's tour of duty on the Sundays here involved. The Sunday work on those days consisted of copying Form 19 train orders to give information on passenger trains overdue or running late for informational purposes to yard crews. On week days this duty was performed by placing the required number of copies on a hook in the office where employees needing the information secured a copy.

On May 29, 1949, Carrier changed the Clerk-Operator position at the yard office from a seven-day to a six-day assignment, with Sunday as rest day. The first trick operator at the passenger station was directed on Sunday to get a late or overdue order on passenger trains, place copies thereof in an envelope and address it to the yardmaster at the freight yard. The envelope was transmitted to the freight yard by messenger using a Carrier-owned motor truck. After objection by the Organization, Carrier discontinued the use of a messenger and directed the first trick operator at the passenger station to carry them to the freight yard office and place them on the hook in the same manner as was done by the regularly assigned telegraphers at the yard office. This method of handling has continued to the present time except during the winter-spring seasons when the first trick operator's position was reestablished on Sundays. The first trick operator at the yard office claims a call for each Sunday that Form 19 train orders were sent by messenger or delivered by the first trick passenger station telegrapher to the yard office at Buena Vista.

The record does show that on seven Sundays train orders were handled at the passenger station for freight trains moving outside of yard limits. They were delivered directly to train crews at the passenger station. We see no violation in this, even though such train orders may have been handled at the freight yard office if there had been a telegrapher on duty. We know of no rule which requires that train orders be delivered to train crews at any particular station. This dispute therefore involves only the correctness of the Carrier's action in sending Form 19 train orders from the passenger station to the yard office, first by a messenger and later by the telegrapher on duty at the passenger station on Sundays when the first trick telegrapher's position at the yard office was not filled by a relief or extra man.

The dispute involves the meaning of the term "to handle train orders" as used in Rule 26. The Carrier asserts that this expression means that telegraphers shall copy such orders and perform such duties with reference to them that require the skill or training of a telegrapher. It contends that the rule was never intended to prohibit the "messengering" of train orders. The Organization contends that the handling of train orders includes their delivery to the addressee. This is a question that has been before this Board many times and it has repeatedly been held that the handling of train orders includes their delivery to the addressee. Awards 1713, 1719, 5013, 5087, 5122.

The Carrier points out that the first trick telegrapher position at the freight yard was filled when trains originated there. It was only when Form 19 train orders were used to expedite the work of yard engines that required no train orders to operate within yard limits that the first trick operator position was not filled and the methods used which resulted in this dispute were employed. The final question is: Was it a violation of the Agreement for the first trick telegrapher at the passenger station to deliver Form 19 train orders at the yard office on a rest day of the regular assigned telegrapher at the latter point? We think it was.

The Carrier may, of course, under certain circumstances, abolish a position and transfer the remaining work to others, even to employes at another station in some cases. But the rules as interpreted by this Board do not permit a seven-day position to be reduced to six by allowing the work remaining to be performed on the seventh day to be done by an employe at another station. Such rest day work, if there is no regular relief man assigned, must be given to an extra man, if available, and if an extra man is not available, to the occupant of the regular position on an overtime basis. See Awards 4728, 4815, 5333, 5475.

The Carrier asserts that the rule does not apply to Form 19 train orders issued for the informational benefit of yard crews not requiring train orders or clearance cards in order to operate. The purpose of Form 19 train orders is to expedite yard work and eliminate dangers resulting from late and overdue trains moving in and out of the terminal. The work is telegraphers' work and is assigned to yard office telegraphers except under the conditions set forth in this claim. The contention advanced by the Carrier is not sufficient to warrant the taking of this Sunday work from the freight house telegraphers and giving it to a telegrapher at the passenger station.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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 Agreement was violated as set forth in the Opinion.

AWARD

Claim sustained in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 27th day of May, 1952.