

Award No. 6055
Docket No. TE-6119

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
(Line West)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (West of Buffalo) that:

- (1) The Carrier violated the terms of the agreement between the parties when it required or permitted employees holding no rights under the agreement to copy train orders at East 26th Street, Cleveland, Ohio on October 26, 1949 and January 4, 19, 1950; and
- (2) In consequence of these violations the Carrier shall pay an amount equal to a day's pay of eight hours at the minimum rate in effect on the seniority district covered by the schedule to each of the following extra telegraph service employees who were idle, available, willing, able and entitled to perform this work:

October 26, 1949 — Claimant J. S. Wozny

January 4, 1950 — Claimant H. Zigman

January 19, 1950 — Claimant D. Piunno

EMPLOYEES' STATEMENT OF FACTS: There is a switch cabin located at East 26th Street, Cleveland, Ohio, where switchmen are employed to operate hand-throw switches for train movements. These employees are not subject to the Telegraphers' Agreement. No employees under the agreement are assigned at this point.

In the territory at East 26th Street, Cleveland, the Carrier maintains four main tracks — tracks 1 and 3 are westbound tracks, and tracks 2 and 4 are eastbound tracks. Tracks 1 and 2 are normally used by passenger trains and 3 and 4 are normally used by freight trains. There is also a yard (several switch and storage tracks) at this point in charge of a yardmaster.

The Carrier installed in the switch cabin at East 26th Street a telephone connected to the train dispatcher's telephone circuit, as well as a local telephone.

On October 26, 1949 Yardmaster Washer at the East 26th Street Cabin copied Form 31 train order No. 222 by use of the train dispatcher's telephone

because of yard operating contingencies which could not have been foreseen;

4. First Division Award 1620 reveals that, for many years, the Telegraphers have benefited by arrangements in effect on the Lake Front Branch;
5. Third Division Award 4287 refutes the instant claims;
6. Other awards of the Third Division, N.R.A.B., uphold the carrier's position;
7. The Organization's claims in this docket are untenable, are not supported by the rules, and should be denied.

All evidence and data set forth in this dispute have been considered by the parties in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization claims that the Carrier violated the terms of the effective Agreement when it required or permitted employees holding no rights under the Agreement to copy the train orders at East 26th Street, Cleveland, Ohio, on the following dates; October 26, 1949; January 4, 1950; and January 19, 1950.

The Organization asks that a day's pay of eight hours at the minimum rate in effect on the seniority district covered by the schedule be paid to the extra telegraph service employees who were idle, available, willing, able and entitled to perform the work: October 26, 1949—J. W. Wozny; January 4, 1950—H. Zigman; January 19, 1950—D. Piunno.

The Organization relies on Articles 1, 2, 21 and 22.

Article 1 reads as follows:

"Scope

"(a) This agreement applies to wire chiefs, operators of mechanical machines used for transmitting or receiving communications from one city to another, agents, agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, telegrapher-levermen, telephoner-levermen, telegraphers, telephone-operators (except switchboard operators), block operators, clerk-telegraphers, clerk-telephoners, telegrapher-switchtenders, telephoner-switchtenders, and others whose positions are shown in the attached wage scale, hereinafter termed employees.

"(b) Employees performing service in the classes specified in the preceding paragraph shall be classified in accordance therewith.

"(c) All employees herein specified shall be paid on the hourly basis except as otherwise designated in the Wage Scale."

Article 22 reads as follows:

"Handling Train Orders

"(a) No employees 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 telegrapher will be paid for the call.

"(b) Emergencies as specified in the preceding paragraph of this article shall include only casualties or accidents, storms, engine failures, wrecks, obstructions to tracks, washouts, tornadoes, slides, or unusual delays due to hot boxes or break-in-two, that could not have been anticipated by the dispatcher when the train was at the last previous open telegraph office, and which would result in serious delay to traffic."

The facts are not in dispute, however, the Carrier contends that it did not violate any articles of the Agreement because a telegrapher has never been employed at the East 26th Street Yard, and that Article 22 refers to offices where an operator is employed.

We have read the many awards of this Division covering the identical question and claim, and there is a conflict in the awards. However, in this claim we view the train orders copied by the employes outside of the Telegraphers' Agreement as permissibly incidental rather than an unwarranted invasion of the Telegraphers' field. Award 4259. Single orders were copied on the three days in question and this is insufficient to establish a breach of the Agreement. Therefore, this claim must be denied.

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

That the 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1953.