Award No. 6321
Docket No. TE-6395

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO AND EASTERN ILLINOIS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago and Eastern Illinois Railroad; that

(1) the Carrier violated the terms of the effective agreement between the parties when and because it required or permitted Conductor Cutler, an employe not covered by said agreement, to handle a train order and perform "OS" work (reporting arrival and passing of trains) by use of the telephone at Rossville Junction, Illinois on July 21, 1949; and

(2) the senior idle telegraph service employe on the seniority district on July 21, 1949, shall now be compensated in the amount of one day's pay of eight hours at the established rate for the work of which he was deprived by the Carrier's violative action.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of May 1, 1945, is in effect between the parties to this dispute.

Rossville Junction, Illinois, was a former open telegraph office with telegraph service employes on duty around the clock. It is now listed as a closed station; however, a telephone communication device is still maintained by the Carrier at this location.

Rossville Junction is located on the main line of the railroad at a place where a branch line diverges therefrom.

On July 21, 1949, when Extra Train 1937, South, arrived at Rossville Junction, after completing its work on the branch line, Conductor Cutler of that train came in on the train dispatchers' telephone circuit and performed "QS" work by reporting the arrival of Extra 1937 at Rossville Junction and advising the dispatcher that his train, Extra 1937, was ready to enter the main line from the branch. As there were two sections of a superior train, moving in the same direction, overdue at Rossville at that time (4:20 p.m.) the train dispatcher required or permitted Conductor Cutler to copy and handle train order No. 312 addressed to Extra 1937, South, which in substance gave Extra 1937 right to follow the second section of No. 93 by ordering Third No. 93 to wait at Rossville Junction until 5:15 P. M.

In addition to performing "OS" work in reporting the arrival of Extra 1937 at Rossville Junction and handling train order No. 312, Conductor Cutler

Carrier affirmatively asserts that all data contained herein has been handled with the employes' representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim, rules and facts involved herein are so similar to those involved in Award 5086 as to present the same ultimate issue for determination by this Division. The claim in Award 5086 was sustained, and that Award has since been reinforced by Award 5992. These precedents are considered controlling in the present case as there is no material distinction between the cases. Award 5866 involved a claim for the re-establishment of a position rather than merely for one day's pay and can be distinguished from Awards 5086 and 5992 at least on that basis.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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 Carrier violated the agreement.

AWARD

Claim (1) and Claim (2) both sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 10th day of September, 1953.

DISSENT TO AWARDS NOS. 6321, 6322, DOCKETS NOS. TE-6395, TE-6396

Awards 6321 and its companion Award 6322 merely follow, without deciding anything, the predilections of previous holdings of this Board. In doing so they look aside from the square holding of Award 5866 on the same rule and attempt to distinguish it on the ground that the claim there called for the restoration of a position rather than for payment for one day. The distinction is hollow for the style of the claim cannot dictate the basis in which the claim sounds; else valid precedent could be escaped or secured by the framer of the claim.

Award 5866, not here followed, straightforwardly held that the rule there, which is the one here, limited the use of the telegrapher craft to those offices where employed. And that is what the rule says, viz.,

> "No employes other than covered by this schedule 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 notified and paid for the call."

But our current opinion adheres to **Award 5086**. That award fictionizes that because **telephone** operators, other than the switchboard variety, are within the scope of the telegraphers' agreement, there must be a telegrapher stationed at, or paid for not being used at, every country telephone booth at each end, if not both ends, of every blind siding throughout this nation's maze of railroads. Thus that award, which is cited and followed by **Award 5992** (see its dissent), both being cited and followed by the current **Awards 6321** and **6322**, precipitates a rank absurdity upon the rail industry which is committed by law to the economical, efficient and safe service of the public.

Must train orders be passed through the hands of **three** men, written down, repeated and perhaps erred in, before a train can be moved out of every and often remote blind siding or branch line? Or, at these locations where offices are not maintained for the volume and regularity of such transactions, may not a conductor take such orders **direct** from his dispatcher without a fictional middleman? Is the impracticality of the former a command to be met or paid for or shall carriers follow the sound interpretation of the rule?

This is chaos by interpretation. But of greater importance is the proposition that this Board with its Urim and Thummim cannot go on bewildering railroad managements in the serious business of moving the public and its property.

We dissent to the perpetuation of poor decisions.

/s/ E. T. Horsley

/s/ W. H. Castle

/s/ R. M. Butler

/s/ C. P. Dugan

/s/ J. E. Kemp