Award No. 6487
Docket No. TE-6524

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

LeRoy A. Rader, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
ATLANTA AND WEST POINT RAILROAD COMPANY
THE WESTERN RAILWAY OF ALABAMA

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlanta and West Point—Western Railway of Alabama; that

(a) The Carrier violated the provisions of the agreement between the parties when it required or permitted employes not covered by said agreement to copy train orders, as follows:

(1) Conductor Boyd copying Train Order No. 14 at Cooks, January 30, 1951.

(2) Conductor Crosby copying Train Order No. 11 at Books, March 18, 1951.

(3) Conductor Lancaster copying Train Order No. 29 at Moreland, January 11, 1951.

(4) Conductor Williamson copying Train Order No. 47 at Moreland, February 20, 1951.

(5) Conductor Boyd copying Train Order No. 56 at Cusseta, January 20, 1951.

(6) Conductor Williams copying Train Order No. 11 at Whitehall, October 8, 1950.

(7) Conductor Florence copying Train Order No. 29 at Madras, February 8, 1951.

(b) In consequence of the above violations the Carrier shall now be required to compensate the senior idle employe covered by the Telegraphers' Agreement on the district where the violations occurred in the amount of one day's pay of eight hours at the established rate.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of September 1, 1949, as amended July 12, 1950, is in effect between the parties to this dispute.

Conductor Boyd in charge of Extra 377 East, at 7:51 A. M., January 30, 1951, was required or permitted to copy Train Order No. 14 at Cooks, Ala-

OPINION OF BOARD: Petitioner claims violation of the Agreement on seven occasions by reason of Conductors copying train orders at points where no Telegrapher was employed. The dates in question cover a period from October 8, 1950 to March 18, 1951, inclusive. The stations involved were made non-agency and positions assigned there abolished during the period 1928 to 1949, but telephone facilities were left intact.

It is contended in support of the claim that the intent of the Agreement as a whole, and particularly the scope, new positions, classifications and seniority rules thereof, is to secure and preserve the right of employes upon whose behalf the Agreement was made, to perform all the work contemplated thereby, to the exclusion of all others, except where by express provision it permits such work to be performed by others, and that no such exception to this general intent prevails herein, and therefore the Agreement was violated.

Respondent's position is that it does not deny that on each of the seven occasions named, a Conductor voluntarily and on his own accord, copied a train order either as an emergency or to save delay of his train. Also, at none of the points at which a train order was copied, is a telegraph or telephone office where an Operator is employed and is available, or can be promptly located. And that none of the stations listed is included in the list of positions and rates of pay shown at page sixteen of the current Agreement. On this premise Carrier contends that the applicable rules involved in this dispute are Articles 1 and 20, which provide as follows:

ARTICLE 1

SCOPE

"Effective September 1, 1949, the following rules, regulations and rates of pay will apply to all Telegraphers, Telephone Operators (except switchboard operators), Agent Telegraphers, Agent Telephoners, Towermen, Levermen, Tower and Train Directors, Block Operators and Staffmen, also such Station Agents, Assistant Agents, Ticket Agents and Ticket Sellers as are listed herein."

ARTICLE NO. 20

"No employe, 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 paid for the call."

And reliance is placed on a notice placed on bulletin board in 1920, as follows:

Atlanta, Ga.,
November 20, 1920

Train crews—Newnan, Ga.

On and after this date when emergency makes it necessary for train crews to copy order during hours operators are not available at regular established train order offices a copy of orders received will be forwarded to Chief Dispatcher by first mail. This will not apply at non-regular established train order offices.

W. H. Cooper,
Chief Dispatcher

(COPY OF BULLETIN TO BE POSTED ON BULLETIN BOARD)

And that on January 10, 1923, Petitioner's General Chairman expressed his opinion that some Conductors were not complying with this bulletin notice. That Carrier accepted this suggestion, advising the General Chairman under date of January 19, 1923, as follows:

"Replying to yours 10th instant:

Will arrange to furnish Time Keeper with memorandum showing when Dispatchers have placed orders direct to Conductors at telegraph stations, and try this plan out for a while."

Respondent contends that the notice and exchange of letters show conclusively that it was the intention to comply with Rule 20, and that past practice over a long period of time defeats this claim.

Petitioner and Respondent each cite a number of Awards to support the positions taken. Petitioner citing, with others, Award 5992 as being directly in point on this claim, in the matter of facts, rules and past practice; also citing Awards 5086, 6321 and 6322 as meeting the position of Carrier in this case on contentions made and rejected.

Respondent Carrier contends that as these were non-agency positions, no violation could result. Also that the telephone has been used to dispatch trains on this property since 1914 and for the past twenty-seven years has been operating in the manner described, without protest from Telegraphers. Also, that long practice acquiesced by employes, of train crews copying orders at points where Operators were not employed either did not exist, or was not argued by the Carrier in Awards cited by Petitioner in any case except in Award 5992. That Award 5086 considered controlling by Petitioner, and also Award 5992, are not a precedent in this case, although the rule there is identical to Article 20 herein by reason of the fact it was negotiated under different circumstances and interpreted differently by the parties. In Award 5086 Article 3, the D. L. and W. train order rule, became effective November 1, 1947. There never had been any previous Agreement. The train order questioned was copied on January 17, 1948, Employes filed claim in less than ninety days after the rule became effective, and that here Article 20 has been in the Agreement since 1923 and twenty-seven years elapsed before the practice was protested. Also, that on many properties having the instant rule there have been negotiated Memorandum Agreements to prohibit train crews copying train orders at points where Operators are not employed, and this is indicative that the standard Handling Train Order Rule does not prohibit such practice.

The rules of the Agreement cited and considered in the presentation of this claim and the Awards cited by Petitioner lead us to a serious consideration of Award 5086, which was cited with approval in Award 5992. In Award 5086, as presented on behalf of Petitioner, the claim was filed promptly after the alleged violation occurred, i.e., within a time period of several months, and this Award should be considered with that thought in mind. The rule therein had only recently been negotiated. In the instant case we are dealing with a rule in the Agreement for some twenty-seven years prior to the filing of a claim alleging violation thereof, and based on the Scope Rule. Also, here we have the additional factor of the notice bulletined in 1920 together with exchange of letters relative thereto. Respondent has pointed out the last sentence thereof:

"* * * This will not apply at non-regular established train order offices."

If it were considered necessary to have a record made of such copy of train order at stations where there was a regular train order office, how much more essential would it be to have such a record made at non-regular established train order offices if Employes had in mind such a situation as is herein presented and if, as now contended, violation of the Agreement would result?

In the intervening period of some twenty years, undoubtedly train orders were copied from time to time in the natural sequence of events in such matters at non-agency points, presumably when emergencies existed or to keep their trains moving. It may well be argued that if such copying of train orders is per se a violation of the Agreement, then the intervening of the long period of time does not condone the practice. However, by such period of time it appears that this has become a standard practice, acquiesced in by employes and that the parties have placed their own interpretation on the same. And such being so, it is not the province of this Division of the Board to reinterpret the rules for them. See Awards 5618, 6076 and others cited therein.

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

There is no violation of the Agreement under the record presented.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 11th day of February, 1954.