Award No. 6676
Docket No. TE-6513

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Norris C. Bakke, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Denver and Rio Grand Western Railroad:

(1) That Carrier violated the Agreement between the parties, when on the 6th day of November 1949, and continuing until the 28th day of March 1950; on the 8th day of April 1950, and continuing until August 1, 1950, and again on November 5, 1950, it declared the position of 3rd telegrapher at "AS" Alamosa, Colorado, abolished; that the work of such position remained during such periods and still remains, but was by the Carrier, in violation of the Agreement with Telegraphers, transferred to other employes not covered by said Agreement.

(2) That the work of the position of 3rd telegrapher "AS" Alamosa, Colorado, shall be restored to the Telegraphers' Agreement.

(3) That Telegrapher J. L. Clifford, shall be restored to such position and paid for any wages lost plus expenses incurred.

(4) That any other telegrapher wrongfully displaced, as a result of the violative action of Carrier, shall be made whole for any loss of wages or other damages sustained as a result thereof; that if no telegrapher was displaced on any given day, that the senior idle telegrapher be paid one day's pay at straight time rate, for any such day and so long as such violation shall continue.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an Agreement between The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers and The Denver Rio Grande and Western Railroad Company, hereinafter referred to as Carrier, dated June 1, 1946, covering wages, hours and working conditions of Employes of Carrier, for whom, Telegraphers is the designated bargaining agent.

This dispute is between Carrier on the one hand and its Employes represented by Telegraphers on the other and involves interpretation of said Agreement, thus jurisdiction is conferred on this Board under the Railway Labor Act, as amended.

in connection with subsequent collective bargaining agreements made no effort whatsoever to change.

The claim should be denied.

All data in support of Carrier's position has been submitted to the Organization and made a part of the particular question in dispute.

(Exhibits not reproduced).

OPINION OF BOARD: It might appear at first blush that the referee in this case would be bound by Award 1878 relied on by the Organization, in which this same rule (21) in almost identical language was involved, and we sustained the claim, but there is a brief paragraph in that Award that relieves us from being bound by it, said paragraph reading: "The Carrier sees faint hope in its position in Award No. 1489, but that was a dispute as 'between two employes of the same class,' certainly not true in this case where the orders were handled by a conductor." In Award No. 1489 the claim was dismissed. For a discussion of the above see Award 2087.

While it is true in Award 1489 that the dispute was between two operators (telegraphers is the word used in our rule) we think for the purpose of this case the same principle must prevail.

The first paragraph of Rule (21) involved in the present Agreement reads as follows:

> "No employes other than covered by this contract **and train dispatchers** (emphasis supplied) will be permitted to handle train orders at telegraph or telephone offices where a telegrapher 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."

This referee said in Award 1878 that there was no ambiguity in this rule, and he is still of the same opinion, although it would seem that the resort by both sides to past practice in connection with the application of the rule, that it might be otherwise.

While the Organization states in its original submission "When the third telegrapher's position was removed, on each occasion hereinabove mentioned, the work of that position, during the periods above set forth, was transferred, by Carrier, without agreement, to the train dispatcher then on duty. This occurred daily during the time the telegrapher was off. We will show that the work continued during this time; that the dispatcher copied and delivered train orders, prepared and delivered clearance cards to trains at Alamosa and otherwise did work which properly belonged to telegraphers" the joint check was apparently limited to "train orders, D&RGW transfers and clearance cards." Whether so limited or not we think it unimportant because it appears that all the work complained of as being improperly transferred to the dispatcher was work related to "the movement of trains by train orders" which under Rule 21 the dispatcher is entitled to perform. See Awards 5018 and 5468 as to "related work."

We do not believe that the Organization's attempt to segregate the duties of telegraphers and dispatchers is important in any situation where this train order rule is in effect, but even assuming that there was a segregation, and assuming that "dispatcher will be contacted" in the Note to Rule 21 means he will be called, it could very well happen to Alamosa that the dispatcher would be called frequently to the exclusion of the telegrapher even with telegrapher on duty.

Our conclusion, therefore, is that under the first paragraph of Rule 21, the train dispatcher is entitled to perform the work involved and there was no violation of the agreement.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 18th day of June, 1954.