Award No. 7153
Docket No. TE-6985

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlantic Coast Line Railroad:

(1) That Carrier violated the Agreement between the parties hereto, when on the 3rd, 4th, 7th, 9th, 11th and 17th days of August, 1950, it required and permitted train service employes, not subject to said Agreement, to handle train orders and clearance cards, and effect delivery of same at Remini, South Carolina, which work is solely and exclusively reserved, for performance, to employes covered by said agreement.

(2) That Carrier shall be required to compensate the senior extra telegrapher, or if no idle extra telegrapher then the senior idle telegrapher on the Columbia Seniority District, for eight hours (one day) for each and every day and date of such violation as shown in Paragraph (1). The hourly rate to be based on the minimum hourly wage rate for a telegraph position on such District. The names of employes entitled to such payments to be determined by joint check of Carrier's records for such Division, on days and dates above set forth.

EMPLOYES' STATEMENT OF FACTS: On the 24th day of May, 1937, in Case No. R-331, the National Mediation Board issued its certification of representation as follows:

> "On the basis of the investigation and report of election the National Mediation Board hereby certifies that The Order of Railroad Telegraphers has been duly designated and authorized to represent telegraphers, telephone operators (except switchboard operators), agent-telegraphers, agent-telephoners, towermen, levermen, tower and train directors, block operators, staffmen, and such agents as are shown in the existing wage scale of the Atlantic Coast Line Railroad Company for the purpose of the Railway Labor Act."

Thereupon, The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers, and the Atlantic Coast Line Railroad Company, hereinafter referred to as Carrier or Company, entered into a collective bargaining agreement concerning wages, hours of service and other conditions of employment for all employes of the Carrier within the bargaining unit. Such agreement became effective on the 1st day of November, 1939,

The respondent carrier reserves the right, if and when it is furnished with ex parte petition filed by the petitioner in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered in this, its initial answer.

Data in support of the Carrier's position have been presented to the Employes' representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts of this case are simple and undisputed. Prior to 1935, the Carrier had maintained a train order office and a position of Agent-Telegrapher at Remini, South Carolina. However, Carrier's business, both freight and passenger, declined to a point where it became unprofitable to maintain the station at Remini. The agency was closed in 1935 and the position of Agent-Telegrapher was terminated. This was some four years prior to the negotiation of the parties' current Agreement, dated November 1, 1939. After 1935, Remini became known as a "blind siding", a place where trains may leave and reenter the main track, but where no train order or other communication service is provided.

This station is near an extensive swamp over which the main track is carried on wooden trestles. Maintenance of these trestles requires the occasional use of a pile driver. During August 1950 a self-propelled pile driver was in use on these trestles. It used the blind siding at Remini as its base of operations, leaving there in the morning and returning at the end of the day. Since no living accommodations for train crews were available at Remini, the Carrier permitted the conductor and two flagmen to live at their homes at Pinewood, Sumpter and Florence and deadhead to Remini each day on southbound passenger train No. 51, which reached Remini at 7:00 A. M.

Train orders were necessary before the pile driver could enter the main track. And during the course of the day, operating conditions required that the crew of the pile driver receive additional orders and other information. Such orders were received by the telegrapher on duty at Sumpter, some twenty miles from Remini, and delivered to crews of trains, who delivered them to the crew of the pile driver. In short, the orders for this pile driver crew were sent "in care of" those not covered by the parties' Agreement. This occurred on the six days enumerated in the claim.

It is the contention of the Organization that the handling of train orders, including their delivery, is exclusively the work of Telegraphers; and that the Carrier violated the Agreement in permitting the delivery of the train orders to Remini by crew members not covered by the Agreement. This claim is based upon the Organization's interpretation of the Scope Rule, Article 1, which is as follows:

> "(a) This schedule will govern the employment and compensation of Telegraphers, Clerk-Telegraphers, Telephone Operators (except switch-board operators), Agent-Telegraphers, Agent-Telephoners, Towermen, Levermen, Tower and Train Directors, Block Operators, Staffmen, Car Distributors and such agents as are shown in the wage scale.
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> The term 'employes', as hereinafter used, embraces all of the above named classes.
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> (b) The employes herein specified will be paid on the hourly basis, except as may be otherwise shown in the wage scale.
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> (c) Articles 3, 4 and 5 do not apply to positions shown in the wage scale at monthly rates."

The Carrier has denied this claim on the ground that it proceeded in accordance with Operating Rule 217, which has been in force and effect on its property for more than sixty-five years. Carrier's Exhibit No. 1 shows that from January 1, 1885, up to the present time each printing of its Operating Rules has provided for train orders addressed to Conductors and Enginemen to be sent in care of another train. The American Railroad Association adopted this rule in 1887, as Rule 519. The rule was amended April 12, 1899, as Rule 217. It was further revised November 17, 1915, and again November 15, 1938. The current rule has been adopted by the Association of American Railroads, successor to the American Railroad Association. Throughout the years, since 1888, the Atlantic Coast Line has followed this rule, which in its latest version is as follows:

> "A train order to be delivered to a train at a point not a train order office, or at one at which the office is closed, must be addressed to
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> 'C. and E.——at—— care of——,' and forwarded and delivered by the conductor or other person in whose care it is addressed. When form 31 is used, 'complete' will be given upon the signature of the person by whom the order is to be delivered, who must be supplied with copies for the conductor and engineman addressed, and a copy upon which he shall take their signatures. This copy he must deliver to the first operator accessible, who must preserve it, and at once transmit the signatures of the conductor and engineman to the train dispatcher, and preserve the copy.
>
> Orders so delivered must be acted on as if 'complete' had been given in the usual way.
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> For orders which are sent, in the manner herein provided, to a train, the superiority of which is thereby restricted, 'complete' must not be given to an inferior train until the signatures of the conductor and engineman of the superior train have been sent to the ——."

It is not denied that it has been the custom and the practice on this Carrier's property to follow Rule 217 in the delivery of train orders to points where no regular member of the Organization is assigned. Such was the practice before the Organization was recognized. Such was the practice when the parties' current Agreement was negotiated. And such has been the general practice since the adoption of the Agreement of November 1, 1939.

However, certain proposals have been made, the language of which, if adopted, would have reserved the handling of all train orders and other communication service exclusively to those covered by the Telegraphers' Agreement, except in cases of emergencies. And in the latter situation the senior idle telegrapher would have collected a minimum day's pay. Such a proposal was made May 12, 1946, and was to be known as Rule 25. This proposal was withdrawn by the employes, October 2, 1946, in favor of another proposal which was to change the Scope Rule to give it the all inclusive meaning which we are now asked to give to the above-quoted language of Article I. Both of these proposals were rejected by the Carrier. The Scope Rule thus remains as it was agreed to in 1939. And we see no alternative but to accept it here as it was accepted and applied from 1939 to the date of the filing of this claim.

We are urged to conclude that the Scope Rule, together with Article 20, requires that the Carrier restore the Telegrapher (or the Clerk-Telegrapher) position at Remini for the dates in question, and that the Scope Rule overrides the Operating Rule (217). Since the Operating Rule has long been in existence; since it was common practice when the Scope Rule was adopted; and since there is nothing specifically in the Scope Rule which nullifies this

ancient rule and the practice under it, we are left with little in the way of sound reasoning to support such a claim.

Article 20 obviously does not apply. By its very language it is applicable only to situations where "an operator is employed and is available or can be promptly located." Since no operator had been stationed at Remini for some fifteen years, we cannot conclude that this rule applies. Also, Article 20 was designed to apply in emergencies. We do not think that the situation at Remini could be classed as such an emergency.

Both parties were fully cognizant of the provisions of Rule 217, and the practice under it, at the time of the adoption of their Agreement in 1939. Had there been any serious intention to change this, more definite language to that end should have been added in the Scope Rule or at some other point in the Agreement. Failure to do this in 1939, and failure to do it in the 1946 negotiations leads us to the conclusion that the parties have not agreed to change the long-established practice. It is a matter for further negotiation. It is not for us to read into the language of the Scope Rule something which the parties themselves have quite obviously omitted.

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 Agreement has not been violated.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of November, 1955.