

Award No. 7401
Docket No. TE-7210

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Western Maryland Railway, that:

CASE NO. 1

1. Carrier violated the Agreement between the parties, when on August 8, 1952, it required or permitted Conductor J. E. Sullivan, an employe not covered by the Telegraphers' Agreement, to receive and copy "81" train order No. 62 at Lincoln, Pennsylvania.

2. Carrier violated the Agreement between the parties, when on August 8, 1952, it required or permitted Conductor J. W. Cameron, an employe not covered by the Telegraphers' Agreement to receive and copy "31" train order No. 62 at Bittering, Pennsylvania.

3. Carrier shall be required to compensate the senior idle employes an amount equal to a day's pay at the minimum rate for the same class of service in effect on that district.

CASE NO. 2

1. Carrier violated the Agreement between the parties, when it required or permitted employes not covered by the Telegraphers' Agreement to receive and copy train orders on the following dates at stated locations:

June 4, 1952, Order No. 424 to Train Crew Exa 761 West, Hancock, Md.
June 6, 1952, Order No. 423 to Train Crew Exa 761 West, Hancock, Md.
June 6, 1952, Order No. 425 to Train Crew Exa 761 West, Hancock, Md.
June 13, 1952, Order No. 420 to Train Crew Exa 761 West, Hancock, Md.
June 20, 1952, Order No. 410 to Train Crew Exa 761 West, Hancock, Md.
June 20, 1952, Order No. 411 to Train Crew Exa 761 West, Hancock, Md.
June 20, 1952, Order No. 413 to Train Crew Exa 761 W., Doe Gully, Md.
June 25, 1952, Order No. 409 to Train Crew Exa 66 W., Doe Gully, Md.
June 25, 1952, Order No. 421 to Train Crew Exa 761 West, Hancock, Md.
July 4, 1952, Order No. 405 to Train Crew Exa 757 West, Hancock, Md.

July 11, 1952, Order No. 410 to Train Crew Exa 757 West, Hancock, Md.
 July 11, 1952, Order No. 413 to Train Crew Exa 176 West, Hancock, Md.
 July 16, 1952, Order No. 414 to Train Crew Exa 180 West, Hancock, Md.
 July 18, 1952, Order No. 413 To Ass't Train Master M. E. Donegan at
 Hancock for Extra 770 West.

2. Carrier shall be required to compensate the senior idle employes an amount equal to a day's pay at the minimum rate for the same class of service in effect on that district.

NOTE: A joint check of Carrier's record to determine proper employes entitled to payment.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement, effective February 1, 1951, between the Western Maryland Railway Company and The Order of Railroad Telegraphers governing the employment and compensation of employes specified therein. A copy of this agreement is on file with your Board and, by this reference, is made a part hereof.

Case No. 1:

There is no dispute as to the facts in this case. On August 8, 1952, Conductor J. E. Sullivan of train extra 21 west was at Lincoln, Pennsylvania. At the same time Conductor J. W. Cameron was in charge of extra 54 east at Bittinger, Pennsylvania. Lincoln, Pennsylvania is approximately 19 miles east of Hanover, Pennsylvania and Bittinger, Pennsylvania is approximately 3 miles west of Hanover. There was no operator or other employe covered by the Telegraphers' Agreement on duty at either Lincoln or Bittinger on the date involved. Conductors Sullivan and Cameron both obtained the following Form "31" type train order:

"Western Maryland Railway Co. FORM

Train Order No. 62 31

August 8, 1952

"C & E
 To Extra 54 East
 C & E Eng 21
 At Bittinger via Hanover
 At Lincoln via Hanover
 "Eng 21 run extra Lincoln to Hanover.
 Extra 54 east meet extra 21 west at Porters.
 Extra 21 west take York Sub-Division
 "Each employe addressed must have a copy of this order.
 "Repeated at 4:25 P. M.

"Conductor or Engineman	Train	Made	Time	Operator
J. E. Sullivan	Ex 21	Complete	518P	Wertz
Cameron	Ex 54	Complete	524P	Wertz"

The manner in which the train orders were handled was as follows:

The dispatcher transmitted the order to Operator Wertz at Hanover with Conductors Sullivan and Cameron listening in on the dispatcher's telephone. The dispatcher then instructed Wertz to transmit the order to both of the conductors and, after they had copied it, to sign the conductors' names to the order. The operator then repeated the order back to the dispatcher, after which the conductors repeated the order back to the operator with the dispatcher checking the conductors' repeat. There was a total absence of any emergency.

4. The Employees' request is tantamount to a request for a new rule.

5. To accede to the Employees' request would result in creation of numerous unnecessary jobs with unwarranted expense.

6. Awards of the Third Division, National Railroad Adjustment Board, support the position of the Carrier.

This dispute has been handled by the Carrier in accordance with the provisions of the Railway Labor Act and the rules of the National Railroad Adjustment Board. All data submitted in support of its position by the Carrier have been presented to the Employees and made a part of the particular question in dispute.

(Exhibits not reproduced)

OPINION OF BOARD: The facts in this case are simple and undisputed. Conductors were required to copy train orders at telephone call boxes at Lincoln, Bittinger, West Hancock and Doe Gulley, Pennsylvania, all of which points have no assigned telegraphers. These orders were received from telegraphers at Pearre and Hanover. The claim is for a day's pay for the senior extra telegrapher available on the several dates in question and for a joint check to determine the proper employees entitled to such payment.

It is claimed that there has been a violation of the Scope Rule of the parties' Agreement of February 1, 1951, in that the transmitting and copying of train orders is reserved exclusively to those covered by the Telegraphers' Agreement. As we have noted in Award 7400, practice with respect to the copying of train orders by members of train crews where no telegrapher is assigned or presently on duty varies from one Carrier's property to that of another. One important controlling factor is the presence or absence of the Standard Train Order Rule in the effective Agreements. This Carrier has never accepted or adopted the Standard Train Order Rule. And the practice of having train orders copied by conductors and trainmen at stations, sidings and other points where telegraphers are not regularly assigned has been the practice on this Carrier's property for forty years or more. Therefore, we cannot conclude that the Scope Rule in the parties' Agreement of February 1, 1951, precludes a practice so long and well established. Award 7401.

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

That the parties waived hearing on this dispute; and

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees 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: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September, 1956.