# Award No. 7953
# Docket No. TE-7181

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

H. Raymond Cluster, Referee

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## PARTIES TO DISPUTE:

## THE ORDER OF RAILROAD TELEGRAPHERS

## SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
## (Texas and New Orleans Railroad Company)

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Lines in Texas and Louisiana—Texas and New Orleans Railroad:

(1) That Carrier violated the Agreement between the parties hereto when on the 1st day of January, 1952, it required and permitted Conductor of Train No. 376, an employe not covered by the Agreement, to handle Train Order No. 44, at Friar, Texas.

(2) As a result of this violation Carrier shall compensate the senior idle extra employe, or if none, the senior idle employe on the Victoria seniority district (January 1, 1952, a holiday) for eight hours at the applicable rate of time and one-half standard holiday rate of pay.

**EMPLOYES' STATEMENT OF FACTS:** There is in full force and effect an Agreement between the Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans Railroad Company), hereinafter referred to as Carrier and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The current Agreement was effective December 1, 1946 and will be referred to as "Agreement." A copy of said Agreement is on file with this Division of National Railroad Adjustment Board and is, by reference, included herewith as though copied herein word for word.

This dispute arose on the 1st day of January, 1952, and claim was filed at the time and in the manner prescribed in the Agreement and was duly handled on the property in the customary manner up to and including the highest officer designated by Carrier to handle such disputes. After such handling, including conferences, as provided by law, the claim was declined by the highest officer of Carrier designated to handle such disputes and is properly submitted to Third Division, National Railroad Adjustment Board for decision and award.

On the 1st day of January, 1952 (a legal holiday designated in the Agreement as New Year's Day), Conductor Keefe (Train No. 376) copied the following order at Friar, Texas:

4. That the sustaining of the instant claim would be adverse to the working conditions of the conductors and it would therefore be proper that the conductors be given due notice.

5. Practice of employes other than Telegraphers handling train orders has been in effect for at least fifty years.

6. That the Organization has unsuccessfully made strenuous efforts on repeated occasions to obtain through negotiations a rule which would support this claim. They are now seeking before this honorable Board, through the medium of an interpretation, that which they have consistently been unsuccessful in obtaining through negotiations, and that the ORT has been able to get sustaining awards on similar claims on other carriers based on rules and practices in effect, which were substantially the same as those which this Organization sought on this property, but did not obtain.

7. That letters written by the ORT representatives clearly demonstrate their recognition that they had no rule or understanding which would support a claim of this kind.

8. That letter written by the General Chairman attempted to set up contention that train order work belonged exclusively to Telegraphers on the basis it was "so held" by the Board without citation of any words to that effect in the agreement involved.

9. That this all makes it clear that the employes seek a new rule (which they have not been able to secure by negotiation) which is not a function of the Board to grant under the provisions of the Railway Labor Act.

10. That awards of the Third Division dictate a denial award in this case. Awards 2817, 4104, 4259, 4791, 5079, 6071, 6487 and many others.

For the reasons shown this claim is entirely devoid of merit or validity and should be denied.

The substance of all data and argument included in this submission has been made known to the employe's representative in handling this case on the property, either by correspondence or in conference.

As the Carrier has not seen or been furnished with a copy of the Organization's ex parte submission, it is not in a position to anticipate the contentions that will be made or attempt to answer those contentions at this time. Every effort has been exerted to set forth all relevant argumentative facts, including evidence in exhibit form, but as it is not known what the Organization will present, the Carrier desires an opportunity to make such additional answer thereto as may be deemed appropriate.

Oral hearing is respectfully requested and thereafter an opportunity to file such written answer to the oral argument that may be made by the representatives of the Organization at the hearing as may be deemed necessary or proper.

The Carrier respectfully requests that the claim be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On January 1, 1952, the conductor on Train No. 376 used a Carrier owned telephone located at Friar, Texas, a so-called "blind siding" where no telegraph operator was employed, to call the dispatcher and request more time to get his train to Victoria Freight Yard, since it had been delayed by an unexpectedly large amount of switching at Friar. The dispatcher issued Train Order No. 44 to the conductor over the telephone and the conductor wrote it down, verified it with the dispatcher, passed it on to the other members of the train crew and operated the train in accordance with

its authority. Petitioner contends that by this action, the conductor performed work belonging exclusively to members of the telegrapher craft under the scope rule of their Agreement, and therefore claims eight hours pay at the holiday rate for the senior idle telegrapher in the seniority district.

This simple factual situation has given rise to a dispute of massive proportions. The parties have submitted to the Board an exhaustive, exhausting (more than 300 pages of argument and more than 75 prior awards) and quarrelsome record for its study in deciding the case. This, despite the fact that the very issue in dispute has been before the Board in claims involving many different Carriers over a long period of years. These claims have resulted in a substantial number of sustaining awards and an equally substantial number of awards in which the claims have been denied. Many of these decisions are distinguishable from one another on the basis of differing facts, but a number of them appear to be indistinguishable and purely opposite. The various principles involved have been stated and restated in the Board's opinions, and the arguments put forward in this case have been presented and re-presented by the parties in past cases. It is obvious from the record that despite all of this prior consideration the parties to this dispute have been unable to reach any agreement as to the meaning or effect of the rules involved.

With such a background, it would be of no value in this case to attempt to compare, reconcile or distinguish all of the previous awards which have been cited to us. Since all that can be said about the subject appears to have long since been said, and the decision in this particular case obviously will not decide or control future cases to any greater extent than past decisions have done, all that seems required is for the Board to reach its conclusion based on the particular record before it, and let it go at that. However, in view of the extensive arguments submitted by the parties, we feel obligated to state our primary reasons for reaching that conclusion; we will not attempt to discuss all of the conflicting contentions and awards urged upon us by the parties.

The two rules which apply to this dispute are as follows:

"Rule 1. Scope. This agreement shall govern the employment and compensation of the following:

'Managers and wire chiefs; telegraphers; telephone operators (except switchboard operators); agents; agent-telegraphers; printer and teletype mechanics, operators and supervisors now employed in "WS" office, New Orleans; "HN" office, Houston; "N" office, San Antonio; and printer and teletype operators that may be employed in the future in telegraph offices or who displace telegraphers; agent-telephoners; towermen; tower and train directors; block operators; staff men; and all other positions listed in the wage scale.'

"The term 'telegraph offices' as used herein means any office where printer and teletype machines have been installed since April 1, 1938 to handle intercity messages."

"Rule 17. Train Orders and Telephones. (A) 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 paid for the call.

"(B) If instructed by train dispatcher or other authority to clear train or trains before going off duty, leaving clearance and/or

orders in some specified place for those to whom addressed, employes shall be paid a call as provided for in Paragraph (A) of Rule 5.

"(C) At locations where no telegrapher is employed, train line-ups may be copied by track car operators who are to use them. Such employes will not furnish 'OS' Reports to train dispatchers."

The parties are agreed that the language of the present scope rule has not been changed fundamentally since it was originally incorporated in the agreement between the parties effective October 1, 1918. At that time the language was taken directly from Supplement No. 13 to General Order No. 27 of the Director General of Railroads. The parties have renegotiated the same scope rule, without any changes which would affect its meaning as applied to this dispute, into agreements effective August 1, 1919, July 1, 1921, September 16, 1924, April 16, 1930, April 1, 1938 and December 1, 1946, the current agreement.

The train order rule, Rule 17 (A) of the current agreement, originated as the result of a request by the Telegraphers' Organization to the United States Railroad Labor Board for a rule against others than telegraphers handling train orders. That Board issued its Decision No. 2025, setting forth a train order rule, and directing that it be incorporated into the individual schedules governing telegraphers on Carriers who were parties to the dispute which gave rise to the Decision. As a result of this Decision, the rule became effective on this Carrier on November 16, 1923 and first appeared in the Agreement between the parties effective September 16, 1924. It was renegotiated into the Agreements effective April 16, 1930 and April 1, 1938, with some changes, none of which, however, is of importance in the dispute before us. In the current Agreement, paragraphs (B) and (C) were added to the rule. Prior to the 1930, 1938, and 1946 Agreements, Petitioner requested a revision of the rule to include telegraph or telephone offices in addition to those "where a telegrapher is employed", but no such revision was ever agreed to.

Petitioner bases its claim upon the scope rule, contending that when the Director General of Railroads in Supplement No. 13 to General Order No. 27 listed the positions therein, his intention was to reserve to the class of employes filling those positions the exclusive right to perform the work which was generally recognized as the work attached to those positions. Petitioner agrees that the rule itself describes no work as such and that to determine what work is covered, one must look to the tradition, custom and practice throughout the industry at that time. Using this approach, Petitioner asserts that the work of handling train orders was generally recognized in the industry as belonging to telegraphers; and that therefore when the parties agreed to place the language of Supplement No. 13 in their agreement as the scope rule, they intended that all handling of all train orders was to be done exclusively by telegraphers, without exception, unless such exception was specifically set forth in the Agreement. Petitioner further contends, in line with this analysis, that any practice to the contrary on any individual Carrier can have no effect on the meaning of the scope rule, since by the incorporation into the rule of the work generally recognized in the industry at the time of its adoption, all ambiguity was removed from it and the work reserved for telegraphers was clearly delineated and not subject to further interpretation.

We cannot entirely agree with this interpretation. What the Director General of Railroads did was to reserve to telegraphers at the particular point in time when he issued General Order No. 13, the kind of work which they were then doing. Of course, it was generally recognized in the industry at that time, just as it is today, that in general the work of handling train orders belongs to the telegrapher craft. But to assume from this that there were no exceptions, that there was complete uniformity of practice, that all train orders under all circumstances were handled by telegraphers it to be unrealistic. Obviously there were certain train orders which were handled by others than telegraphers in certain situations on the various Carriers at that

time. These variations were just as much "tradition, custom and practice" as the tradition, custom and practice upon which Petitioner relies to establish that in the main, the handling of train orders belonged to telegrapher positions. The record shows that on this Carrier, for the last 40 or 50 years, going back to a time substantially prior to the issuance of Supplement No. 13 and its adoption by these parties in their Agreement, employes other than telegraphers have received, on various occasions, train orders at stations where no telegrapher was employed, in circumstances similar to those in the case before us. This was the factual situation at the time the scope rule was first negotiated and has continued to be the factual situation at the time of each subsequent negotiation down to the present time. When one agrees that the language of the scope rule alone describes no work at all, and that one must look to custom and practice to determine the work that is actually attached to the positions described in the scope rule, one can come to no other conclusion in the face of the evidence in this record than that the parties to this agreement have interpreted their scope rule to allow employes other than telegraphers to receive occasional train orders at blind sidings.

It is no enough to say, as Petitioner does, that it is the practice in the industry generally which must prevail, rather than the practice on some individual Carrier. It is apparent from a study of other Awards on this subject that there was a lack of unanimity and considerable disparity in the industry as to the handling of train orders at stations where telegraphers were not employed. These Awards indicate that there are numerous Carriers other than the one involved in this case where the practice was similar to the practice here; so that this practice represents at least one segment of the industry. The plain conclusion is that the scope rule cannot be interpreted as setting forth a precise, exact, all-inclusive and never-varying description of the work included therein throughout the entire industry as Petitioner seeks to interpret it. Variations existed at the time of its initial promulgation and have continued to exist. Where such long existent practices have persevered and survived throughout numerous renegotiations of the scope rule as here, they represent the most realistic evidence of what the parties really intended.

We take pains to add that this case involves a single incident and a long continued practice, and that we decided no more than is before us. We do not think that the fears expressed by Petitioner that any exception to the scope rule opens the door to the eventual elimination of all telegraphers, are justified by this or prior awards of the Board.

We are further buttressed in our view that the scope rule before us was not intended to grant telegraphers the exclusive right to receive train orders at stations where no telegrapher is employed by the negotiation by the parties, subsequent to the negotiation of the scope rule, of the so-called train order rule, and the persistent efforts of Petitioner to broaden that rule. We thing that this is a further indication of the fact that the parties did not intend and had not interpreted the scope rule on this property to include work similar to that which is the subject of the claim in this case.

We have cited no prior awards, since to do so merely invites the resumption of the process of counter-citing and distinguishing without end. However, all of the Awards cited have been considered and the reasoning followed herein finds support in many of them.

**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 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 3rd day of June, 1957.