

Award No. 8333

Docket No. TE-7324

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dwyer W. Shugrue—Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE, LACKAWANNA & WESTERN

RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna & Western Railroad Company that:

(a) the Carrier has violated and continues to violate the provisions of the Telegraphers' Agreement when and because it has required and continues to require employees not covered by the said Telegraphers' Agreement at Bangor to perform communication service of record, such as messages, reports, consists of trains, train arrivals and departures, reporting off-duty times of train crews, handling train orders and operating train order signals; and

(b) in consequence thereof the Carrier shall establish sufficient positions under the Telegraphers' Agreement to perform such duties at Bangor, and pending such establishments and for work denied said Carrier shall pay to each of the three senior idle extra employees, or if there are no idle extra employees, then to each of the three senior idle regular employees, on a day-to-day basis, a day's pay in each 24-hour period, (around the clock operation) except on Sundays and holidays, at the established or going rate of pay; the payees (idle employees) to be determined by a joint check of the Carrier's assignment records.

EMPLOYES' STATEMENT OF FACTS: An Agreement by and between the parties, bearing an effective date of July 1, 1953, and referred to herein as the Telegraphers' Agreement, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The Telegraphers' Agreement lists as a part thereof an agent-operator position at Bangor—rate of pay \$1.914 per hour. Said position, generally if not always, is assigned 8 A. M. to 5 P. M. (lunch hour out) Monday through Friday except the seven specified holidays are not included in the work assignment. Morse telegraph in the Bangor area has been completely replaced by the telephone.

The train dispatcher's office (where the train order signal is operated) is located across the tracks and approximately three city blocks from the

OPINION OF BOARD: This dispute arises at Bangor, Pennsylvania, a point on the Carrier's Bangor and Portland Branch, which until merged with the D. L. & W. in 1949 was operated by the D. L. & W. Bangor is the operating headquarters for this entire branch and is controlled by a train dispatcher whose office is located there. Normal operations indicate that 9 local trains depart and return to Bangor daily, except Sundays. At other stations on this branch, where there are no dispatchers, train orders, emanating from Bangor, are handled by telegraphers. There is also at Bangor an agent-operator position, usually assigned 8 A. M. to 5 P. M., the incumbent of which position infrequently transmits and receives messages, and then only those concerning his freight agency business. For approximately 30 years train dispatchers at Bangor, where train crews go on duty, have been performing the work complained of under specifications of the claim, except with respect to the copying of train orders as indicated below. Prior to July 1, 1953, the effective date of the controlling agreement, conductors on this branch copied train orders received by telephone from dispatchers, but since July 1, conductors no longer copy their train orders but receive them directly from the train dispatchers at Bangor who have issued and copied them. Because the operation of this branch line was conducted in a different manner from that of the D. L. & W., the rights of the telegraphers were not the same. For example, compare Awards 3114 and 3902 with Award 4104.

The Organization in support of its claim cites Articles 1, 3 and 12 (a) which, in pertinent part, will be set forth below. For the purposes of discussion we will also set forth Article 3 of the November 1, 1947 Agreement which unlike Articles 1 and 12 (a) was revised by the 1953 Agreement.

"ARTICLE 1—SCOPE

The following rules and rates of pay shall constitute an agreement between The Delaware, Lackawanna and Western Railroad Company and the Order of Railroad Telegraphers and shall govern the working conditions and compensation of employees in the following positions:

- Agents (ticket or freight, excluding supervisory)
- Assistant Agents (ticket or freight)
- Agent-operators
- Clerk-operators
- Printer and/or Teletype operators (operators of teletype and other mechanical machines used for transmitting and receiving communications of record)
- Operators (except telephone switchboard)
- Car Distributor Operators
- Towermen
- Levermen
- Tower and/or train directors
- Managers of Telegraph Offices
- Wire Chiefs"

"ARTICLE 3—TRAIN ORDER

(a) No employe other than covered by this agreement and train dispatchers will be permitted to handle train orders except in cases of emergency.

(b) If train orders are handled at stations or locations where an employe covered by this agreement is employed but not on duty, the employe, if available or can be promptly located, will be called to perform such duties and paid under the provisions of the applicable call rules; if available and not called, the employe will be compensated as if he had been called.

(c) If train orders are handled by persons other than those covered by this agreement in emergency cases at locations where an employe under this agreement is not employed, it will not be in violation of this agreement and no claim will be made. If train orders are handled by persons other than those covered by this agreement in non-emergency cases at locations where an employe under this agreement is not employed, the senior idle extra employe, or if there is no idle extra employe then the senior idle employe, will be allowed a day's pay at the minimum operator rate on the seniority district for each occasion, except if two or more orders are handled at one location in an 8-hour period only one day's pay will be allowed. Under such circumstances compensation for travel time or expenses is not allowable."

"ARTICLE 12— CLASSIFICATION OF EMPLOYES,
NEW POSITIONS, ETC.

"(a) Where existing payroll classification does not conform to Article 1 employes performing service in the classes specified therein shall be classified in accordance therewith."

"ARTICLE 3—TRAIN ORDERS

(11-1-47 Agreement)

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.

The effective date of this rule on the Bangor and Portland Branches is April 1, 1948."

The Petitioner asserts that all the work performed by the dispatchers falls within the scope of their agreement. They do not deny however, that operating practice on this branch line differed from that extant on the D. L. & W. proper and that the rights of telegraphers were not the same. We are not certain that they bring their claim under Article 3 (b), formerly a part of Article 3 of the 1947 agreement, or Article 3(c). They maintain the existence of an agent-operator position at Bangor but couch the terms of claim (b) in the penalty relief language of Article 3 (c) which refers only to handling train orders at locations where an employe under their agreement is not located.

The Carrier maintains that on this branch line, by virtue of years of acquiesced in practice and the express language of Article 3 (a), the work claimed to be violative of the agreement was never intended to be, nor in fact was, work exclusively reserved by the scope rule to telegraphers.

As we read the 1947 Article 3, except for the delayed effective date with reference to the Bangor and Portland Branches, and the 1953 Article 3 (a) and (b) we see no difference in substances but merely a refinement of language.

Generally "handling train orders" means "copying and delivering." Where ordinarily performed by telegraphers it, by custom, tradition and practice, falls within the coverage of the scope rule. The same applies to copying "communications of record". Such is not the case here; the telegraphers never performed these functions at Bangor and both old Article 3 and new Article 3 expressly state that "train dispatchers will be permitted to handle train orders." This work must be considered limited by the work traditionally performed by telegraphers at Bangor, this scope rule being a reservation of work rule. We cannot find that the practices complained of were abrogated by the 1953 agreement nor has the Organization met the burden of proof

required in establishing that the work in question was exclusively reserved to telegraphers. The claim must be denied.

In conclusion it should be stated that this award is limited strictly to the facts and the particular properly herein involved, that of the Bangor and Portland Branch, and is not to be construed as impinging upon findings made in prior awards affecting the same parties, but reaching different conclusions from different factual situations.

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 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 20th day of May, 1958.