

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Roscoe G. Hornbeck, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware and Hudson Railroad, that:

1. Carrier violated the Agreement between the parties hereto when on the 24th and 25th days of November and December 7 and 9, 1954, it caused, required and permitted, an employe not covered by the Telegraphers' Agreement to handle, (receive, copy and deliver), train Orders numbered 210, 208, 206 and 207, respectively, at Saratoga Springs Yard Office, Saratoga Springs, New York.

2. Carrier shall be required to compensate the senior idle employe, (extra in preference), under the Telegraphers' Agreement, on the Saratoga Division Seniority Roster for one day, (8 hours), at the minimum telegraphers' rate on such Division for each and every day such violations have occurred.

3. Carrier shall be required to permit joint check of its records for the purpose of determining the dates of violations subsequent to dates set forth in Paragraph 1 at Saratoga Springs Yard Office, Saratoga Springs, New York.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect an Agreement between the Delaware and Hudson Railroad Corporation, hereinafter referred to as Carrier or Company, and The Order of Railroad Telegraphers or Employees. The Agreement became effective on the 1st day of July, 1944. A copy of said Agreement is on file with this Board, and is, by reference, included in this submission as though copied herein word for word.

These disputes involve the handling of train orders, by employes other than those covered by the Telegraphers' Agreement. The disputes were handled on the property in the usual manner to the highest officer designated by Carrier to handle such claims, and were denied. The disputes, therefore, constitute unadjusted disputes between Carrier and Employees, and this Board has jurisdiction of the parties and the subject matter under the Railway Labor Act, as amended.

The following is quoted from Opinion of Board in Award 4516:

"The use of the telephone under such circumstances is in lieu of a personal trip or of messenger service. It is not in lieu of any work performed by a telegrapher. The claim of the senior extra employe not working, for a day's pay for not being used at Sauquoit to procure the train line-up for the welding foreman, is not valid and is denied."

The employes contend that there has been a violation of Articles 1, 2, and 23 of the agreement. It is carrier's position that these articles were not violated, nor were they related in any way to the service performed. It is also carrier's position that a claim for one day (8 hours) cannot be supported by these articles, nor by any other article of the current agreement. Neither does the carrier feel obliged to conduct a joint check or to furnish evidence by which employes may enlarge a claim. Awards 11293, 11642, 12345, First Division; and Awards 906, 1566, 2125, 4117, 4305, 4372, Third Division, support carrier's position.

The following is quoted from Opinion of Board in Award 6487:

"In the intervening period of some twenty years, undoubtedly train orders were copied from time to time in the natural sequence of events in such matters at non-agency points, presumably when emergencies existed or to keep their trains moving. It may well be argued that if such copying of train orders is per se a violation of the Agreement, then the intervening of the long period of time does not condone the practice. However, by such period of time it appears that this has become a standard practice, acquiesced in by employes and that the parties have placed their own interpretation on the same. And such being so, it is not the province of this Division of the Board to reinterpret the rules for them."

During the period of over thirty years that there has been no telegraph service at the Saratoga Springs Yard Office; train orders have been received by telegrapher-clerks at the station and telephoned to the yard office without protest or complaint from telegraph employes or their representatives.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made part of the particular question in dispute.

OPINION OF BOARD: Claims of this Organization against this Carrier were recently denied by this Board because the occurrences upon which they were based were sanctioned by long practice of the parties and were, therefore, not in violation of the Scope Rule of the controlling Agreement. Claims 2, 3, and 4 in Award 9204, Stone, Referee.

Other Awards to like effect are 6778, Donaldson, Referee, 7953, Cluster, Referee, 8208, McCoy, Referee and 9032, Hornbeck, Referee.

We are content to follow the above cited Awards.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty,
Secretary

Dated at Chicago, Illinois, this 3rd day of March, 1960.