

Award Number 9343

Docket Number TE-8042

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, 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 August 2, 3, 4, 5, 6, 7, 10, 11, 14, 1954, it caused, required or permitted Conductor McFarland, a train service employe not covered by Telegraphers' Agreement, to handle (receive, copy and deliver) train orders at Castleton, Vermont.

2. Carrier violated the Agreement between the parties hereto when on August 20, 21, 24, 25, 26, 1954, it caused, required, or permitted train service employes not covered by Telegraphers' Agreement to transmit, by use of the telephone, reports of trains, consists of trains, arrival and departure times of trains at various points, to the train dispatcher, from Castleton, Vermont.

3. Carrier violated the Agreement between the parties hereto when on August 29, September 6 and 11, 1954, it caused, required or permitted train service employes not covered by Telegraphers' Agreement to handle (receive, copy and deliver) train orders at Castleton, Vermont.

4. Carrier shall be required to compensate Agent and Telegrapher, Castleton, for one call in accordance with Rule 3(d), for each and every date violations occurred as above set out and for subsequent violations, if any.

5. Carrier shall be required to permit joint check of records to determine violations, if any, occurring at Castleton, Vermont, subsequent to dates above set out.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an agreement, effective July 1, 1944, entered into by and between The Delaware and Hudson Railroad Corporation, hereinafter referred to as Carrier or Company and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employees. The Agreement is, by reference, included in this submission as though copied herein word for word.

thirteen years has not been questioned by the Telegraphers' Organization prior to the present claim.

Claims made for August 20, 21, 24, 25 and 26, 1954, cover the use of the telephone by the conductor to report the train consist. There has never been any requirement of the carrier for a conductor to make such a report. It is sufficient if the conductor, on his arrival, leaves this information at his final terminal in message form to be relayed by the telegrapher whenever the station was opened. With the accessibility of the telephone, the conductors gradually used same for different matters concerning their trains, until it came to a point where they were reporting unnecessary information to the train dispatcher. This practice has since been stopped, such information now being furnished the carrier by the telegrapher while on duty.

There would never be any necessity for calling out an operator to relay the information to the train dispatcher as the report made over the telephone by the conductor was not required at that specific time. The manner in which the information is now being relayed by the telegrapher after he begins his tour of duty verifies the carrier's position. No loss was sustained by the telegrapher at Castleton. He merely had less work to do during his tour of duty.

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

(Exhibits not reproduced)

OPINION OF BOARD: The employees contend in Claims 1 and 3 that the Carrier permitted train service employees not covered by the Telegraphers Agreement to handle train orders at Castleton, Vermont where the Carrier maintains one position under the Telegraphers Agreement with the classification of Agent and Telegrapher. This is a one man agency. The Agent and Telegrapher has assigned hours from 7:00 A. M. to 4:00 P. M. Assigned rest days are Saturday and Sunday. The train orders handled by train service employees on the dates of claim were handled when the Agent and Telegrapher was not on duty. The employees contend that the claimant should have received a call under Article 3 (d) to handle the train orders and that the Carrier violated Article 23 (a) when it permitted train service employees to handle train orders.

Article 23 (a) reads as follows:

"The handling of train orders at telegraph or telephone offices is restricted to employees under the scope of this agreement and Train Dispatchers, except in emergency. In emergency, if an employee under the scope of this agreement is available or can be promptly located he must be called to handle train orders and if not so called will be paid as provided by the call rule."

The Carrier's contention that past practice would permit the Carrier to violate Article 23 (a) is not well taken as past practice would have to yield to the clear and unambiguous terms of Article 23 (a) quoted above. No emergency existed on the dates of claim. In view of the requirement of Article 23 (a) we must sustain claims (1), (3) and that part of claim (4) that refers to compensation on a call basis under Article 3 (d) to the agent and

telegrapher at Castleton, Vermont when Article 23 (a) was violated by the Carrier.

As to Claim 2 wherein the employes state that when train service employes, not covered by the Telegraphers Agreement, transmit by the use of the telephone, reports of trains consists of trains, arrival and departure times of trains at various points, to the train dispatcher, from Castleton, Vermont, they violate the Telegraphers Agreement Scope Rule. The employes admit that the Scope Rule does not specifically designate what work is covered but that it is clear that the sending and receiving of communications of record belong under the Scope Rule.

The Scope Rule of the Agreement does not give to the telegraphers the exclusive right to use a telephone, nor does it give to the telegraphers the exclusive right to perform the work as outlined in Claim 2, nor does any other rule of the Agreement give to this claimant the exclusive right to perform this work. Past practice does not give to this claimant the exclusive right to perform this work. On the other hand the Carrier has shown that it has been past practice to have train service employes perform this work that the claimants contend is theirs exclusively. Therefore Claim 2 will be denied. That part of Claim 4 that relates to compensation for the alleged violation of the Agreement, set forth in Claim 2 will be denied.

Claim 5 was not handled on the property and there is no rule in the Agreement that would require the Carrier to search its records in order to make a claim or claims for this Organization. Therefore Claim 5 is denied.

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 Carrier violated the Agreement in Claims 1 and 3. The Carrier did not violate the Agreement in Claim 2.

AWARD

Claims 1, 2, 3, 4 and 5 disposed of in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of April, 1960.

Dissent to Award 9343, Docket TE-8042.

The majority of the Division which adopted Award 9343, consisting of the five Carrier Members and the Referee, correctly applied Article 23(a) of the parties' agreement to the facts pertaining in parts 1 and 3 of the claim. I am in full accord with the expression of the majority concerning this portion of the claim and, therefore, find no fault with the award as it pertains to the question of the handling of train orders.

The balance of the award, however, is demonstrably erroneous. This Division has reached the settled opinion that communication work of the character here involved belongs exclusively to telegraphers, and the Carrier made no real attempt to convince us otherwise. The Carrier's submission of its position contains the following significant declaration:

"Claims made for August 20, 21, 24, 25 and 26, 1954, cover the use of the telephone by the conductor to report the train consist. There has never been any requirement of the carrier for a conductor to make such a report. It is sufficient if the conductor, on his arrival, leaves this information at his final terminal in message form to be relayed by the telegrapher whenever the station was opened. With the accessibility of the telephone, the conductors gradually used same for different matters concerning their trains, until it came to a point where they were reporting unnecessary information to the train dispatcher. **This practice has since been stopped, such information now being furnished the carrier by the telegrapher while on duty.**" (emphasis ours).

The Carrier very clearly understood the validity of the claim and stopped the violative actions. This fact, together with the settled principle that such work belongs to telegraphers should have led the majority to a correct solution of the dispute. The applicable principle was well stated in Award 6343 as follows:

"Awards of this Division legion in number, hold that messages concerning time of arrival, tie-up and departure of train movements are communications of record. . . .

"While the scope rule of the effective agreement does not specifically designate what work is covered, it is clear that the sending and receiving of communications of record belong thereunder."

Application of that principle to the facts surrounding Claim 2 would have resulted in a correct sustaining award. Failure to so apply it constitutes error and I hereby register my dissent.

**J. W. Whitehouse,
Labor Member.**