

Award No. 9956

Docket No. TE-8876

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Raymond E. LaDriere, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GRAND TRUNK WESTERN RAILROAD COMPANY

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

1. Carrier violated Agreement between the parties when on August 24, 1955, it required or permitted Conductor Barnes, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) train order No. 112 at Attica, Michigan.

2. Carrier shall compensate senior idle telegrapher (extra in preference) for one day (8 hours) at the minimum telegrapher's rate for the violation occurring on August 24, 1955.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between the Grand Trunk Western Railway, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was effective July 6, 1951 and has been amended. The Agreement with all amendments is on file with this Division and is by reference included herewith as though set out herein word for word.

This dispute was handled on the property in the usual manner through the highest officer designated to handle such disputes and failed of adjustment. The dispute having failed of adjustment and involving interpretation of the collective bargaining Agreement, is submitted to this Board under the provisions of the Railway Labor Act as amended. The Board has jurisdiction of the parties and the subject matter under the provisions of such Act.

This dispute involves the handling of a train order by a train service employe at a point where telegraphers are not regularly employed. In the letter of Mr. G. E. Leighty, President, The Order of Railroad Telegraphers dated June 11, 1956, directed to Mr. A. I. Tummon, with a copy to Mr. F. A. Gaffney and the undersigned, a clerical error occurred in naming the train service employe. Under date of June 22, 1956, Mr. Leighty in letter to Mr. Tummon, with copy to Mr. Gaffney and the undersigned, corrected the error in paragraph 1 of the Statement of Claim. Conductor Barnes was the train service employe handling the train order at Attica on the date involved.

This claim has been handled in the usual manner, up to and including the Vice President and General Manager, the highest officer designated to handle claims and grievances, and has been declined.

All data contained herein have in substance been presented to the employees and are made part of the question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a case where a Conductor, while at a point (Attica) where no employe covered by the Agreement is employed, copied a train order from the Train Dispatcher. The ultimate question to be decided is, therefore, whether on the property of this Carrier such work has been reserved exclusively to employes covered by the Agreement.

Rule 24 with reference to handling train orders is to the effect that no employe other than covered by the Agreement, etc. will be permitted to handle train orders at telegraph or telephone offices where an Operator is employed, but both of the parties hereto have agreed that such rule has no application here because the incident occurred at a point where there was no telegraph or telephone office or employe of any kind covered by the Agreement. Consequently the claimant relies on the Scope Rule which is general in nature and specifies positions rather than work to be done, so that claimant's right to recover thereunder must be resolved from a consideration of tradition, historical practice and custom, and on this issue the burden will of course rest on him. Award 6824—Shake, 8129—Smith, 9502—Elkouri, and many others.

Carrier in defending the claim contends (1) that the claim is barred by reason of Petitioner's failure to name the employe for whom the claim is made (to which the Organization rejoins that such objection has been waived as it was not raised on the property); (2) that Petitioner has not proved his claim; and (3) that on this Carrier, it has been the past practice for train crews to handle train orders when necessary at points where no Operator is employed.

As to whether the claim is barred by reason of Petitioner's failure to name the employe for whom the claim is made, and as to waiver of objection there is a great conflict, but it seems to us that this Division in Award 9205—Stone laid down the rule to be followed:

"As to Carrier's contention: claim here is made that Carrier be required to compensate the senior idle telegrapher, extra in preference, on the Champlain Division roster. While not named, he was so described that he could readily be identified by Carrier from its roster without further evidence. There are conflicting views on this issue as shown in Award 1214 of the Fourth Division and the dissent and answer to dissent thereto. We believe the intent of the requirement was complied with."

Award 9250—Stone among others cited by Carrier is not in conflict with the above as there the claim was brought in the name of "all affected employes" and they were not "identifiable".

The Carrier in the Record claimed that it has been the past practice for train crews to handle train orders when necessary at points where no Operator is employed, and this was not denied by the Organization or was any evidence adduced to the contrary. Moreover this seems to be the first time such practice has been challenged by the Organization.

In Award 9204—Stone, one of the latest awards on the subject, it was pointed out (in denying the claim in so far as it arose where no telegrapher was employed):

"Many awards are cited by each party supporting its position. It is impossible to harmonize them, and a Referee can only follow his own thinking."

And it was further said:

"Since the exclusive right here sought is not given by any rule of the agreement, we must seek for tradition and practice. Traditionally the receipt of train orders was restricted to telegraphers; only they knew the Morse code. The telephone was not only a substitute for the telegraph but it also permitted much more extended communication and at more places than possible with the Morse code. Infrequent calls for train orders at a blind siding arising from unexpected situations are not in substitution for telegraph service but rather they employ an additional means of communication not known before the telephone appeared. We cannot believe it material whether received from a telegrapher or dispatcher. The docket before us shows long continued practice on the property for conductors to handle train orders directly from the dispatcher at blind sidings and the unsuccessful attempts by the Organization to obtain revision of the Train Order Rule to give telegraphers the exclusive right to that service as here contended for."

See also Award 6959—Coffey, 7953—Cluster, 7976—Elkouri, and awards cited therein.

In view of the above and the further fact that the claim is based on an isolated instance, we believe it should be 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 Employee involved in this dispute are respectively Carrier and Employee 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 there has been no violation of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of May, 1961.