

Award No. 10060

Docket No. TE-8782

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

J. Harvey Daly, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**LEHIGH VALLEY RAILROAD**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad, that:

1. Carrier violated Article 1 of the Agreement when on March 22, 24, 25, 29; April 1, 5, 6, 8, 12, 15, 19, 21, 26; May 3, 4, 5, 6, 10, 1955, it caused, required or permitted employes not covered by the Telegraphers' Agreement to handle (receive, copy and deliver) track car permits (Form T.C.) at Port Reading Junction, N. J.
2. Carrier shall be required to compensate senior, idle telegrapher (extra in preference) on the NJ&L District for 8 hours at the rate of pay applicable to Port Reading Junction for the violations occurring on the dates above set forth.
3. Carrier shall be required to permit joint check of its records for the purpose of ascertaining the names of employes entitled to receive such compensation for each date of violation and for the purpose of determining any subsequent violations at Port Reading Junction.

**EMPLOYES' STATEMENT OF FACTS:** There is in full force and effect a collective bargaining agreement between the Lehigh Valley Railroad, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers, governing rates of pay, rules and working conditions for employes covered thereby. The Agreement was effective February 1, 1948 and is by reference made a part hereof as though copied herein word for word.

The dispute submitted herein involves interpretation of the aforesaid agreement; was handled on the property in the usual manner to and including the highest officer designated by Management to handle such disputes. Management has declined the claim of Employes and the dispute remains unadjusted. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the parties and the subject matter.

The dispute concerns the handling (receiving, copying and delivering) of track car permits at Port Reading Junction; the employe performing such work not being covered by the Telegraphers' Agreement.

The Organization did attempt to persuade the Carrier to adopt a rule applicable at blind sidings. Failing in the attempt to negotiate such a rule, the Organization now seeks to obtain the equivalent of such by asking your Board to sustain the instant claim in the absence of a rule to support it. In view of the many awards this Board has rendered against such action, we feel certain that the Board will not even attempt to do so.

That the Board will not make agreements or write rules has been decided in many awards. A few such awards of the Third Division are:

2029	2744	4270	4386
2612	3244	4304	4819
2622	3737	4322	5597

Of course, there are many more by this Division, as well as the other Divisions of the National Railroad Adjustment Board. Also many awards have been rendered as to the merits of the type of claim here under consideration. Those which have been decided on rules similar to ours have been denied. To mention a few, the Third Division has denied such claims in award numbers:

1400	4259	5582
1553	5079	5583
1999	5080	5584
2002	5081	5585
4050	5374	5866
4208	5564	6959

Particular attention is directed to Award No. 4259 and Award No. 6959; the rule involved in both of those awards is practically identical with our Rule 32. There is no question that the meaning of the rules in those awards and our rule is identical. The rules in those awards are also confined to points where telegraph or telephone offices are located and where operators are employed, etc. The Carriers' position in those awards reflects practically the same history of the rule involved as in the instant claim.

The Carrier respectfully submits that this claim is entirely without merit, and requests the Board to deny this claim.

The facts presented in this submission were made a matter of discussion with the Committee in conference on the property.

**OPINION OF BOARD:** The question to be answered in this case—the same as in Awards 8146 and 8540—is, whether the Carrier violated the Agreement when it permitted track car driver employes to receive, copy, repeat and deliver track car permits, at a point where no telegrapher was assigned.

The record indicates that, at points where no telegrapher is assigned, the handling of track car permits has been within the work activities of track car drivers for many years. So widely accepted is the practice, that the Carrier—in 1944—established Operating Rule No. 80 which describes in detail the procedures to be followed in the movement of track cars.

In this particular case, the Petitioner failed to prove its exclusive right to the work involved.

The Board believes that the issue herein involved could be more effectively and expeditiously settled in contract negotiations.

**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 Carrier did not violate 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 11th day of September, 1961.