

Award No. 10228

Docket No. TE-8929

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Chicago, Milwaukee, St. Paul and Pacific Railroad, that:

Agent-Telegrapher A. J. Holmes, regularly assigned at Ontonagon, Michigan, be paid a call of two (2) hours at the time and one-half rate for each Saturday, June 18, July 2, 9, 16, 23, 30 and August 6, 1955, that train orders for train No. 882 were handled at his station outside the assigned hours by employes not covered by the Telegraphers' Agreement.

EMPLOYES' STATEMENT OF FACTS: Ontonagon and Channing, Michigan, are stations on the Superior Division of Carrier's railroad. Ontonagon is the terminus of the line extending from Channing, Michigan, to the shore of Lake Superior. At page 61 of the Agreement effective September 1, 1949, the positions at both locations are listed thusly:

Ontonagon	A	1.61
Channing	A	1.63
2nd	O	1.51
3rd	O	1.51

The locale of the other station involved in the dispute is Sidnaw; it is located 47 miles north of Channing about midway between Channing and Ontonagon. Only freight service is performed between Channing and Ontonagon. Train No. 869 leaves Channing on Monday, Wednesday, and Friday doing the necessary switching, enroute Ontonagon, as well as the delivery of carload freight destined to intermediate stations between Channing and Ontonagon. While train No. 882 leaves Ontonagon on Tuesday, Thursday, and Saturday for Channing performing switching service and related work, also moving the carload freight traffic destined to points north or south of Channing.

crew at one point for intermediate handling and delivery to another train crew for execution at another point as in Awards 1167, 1456, 1713, 2926 and 5877. The reason why the Rule is violated in such cases is that such handling and delivery of a train order is not a duty required of the intermediate train crew, but rather the duty of a telegrapher in relation to the other train crew that is to execute the order (see Award 5087).

"SECOND. When there is identity of train and identity of personnel, we find nothing in Rule 29 which requires every train order to such a train to be delivered by a telegrapher at the point or station where it is to be executed. Familiar examples are: a train order delivered at one point to a train to run late between two later points; and round trip train orders (Awards 1489 and 4819).

The train crew to which such train orders are delivered are the addressees of the train orders; and the train orders so delivered govern the movements of the particular train to which delivery is made by a telegrapher. In cases such as these, therefore, there is no intermediate handling of telegraphers' work by employees other than those covered by the agreement. Such train crews are handling their own orders, not somebody else's.

THIRD. In this view of the Rule, the ultimate question presented by this claim is whether there was identity of train and identity of personnel Longmont to Denver.

Identity of personnel is established by the record.

As to identity of train, the Organization argument is that this was two separate trains, because it operated on CB&Q track Longmont to Broomfield and on C&S track Broomfield to Denver, and because it had a CB&Q number Longmont to Broomfield and a C&S number Broomfield to Denver.

Such an argument is based on fiction rather than on reality. However numbered and wherever located on the trip, this train was in fact a single through train with a single train crew. When it passed through the joint station at Longmont, it was properly handed train orders by a C&S telegrapher for execution on C&S track at Broomfield. We are unable to deduce a violation of Rule 29 here by indulging in the hypothesis that this train crew took delivery of train orders addressed to them for execution for the purpose of themselves making a later delivery to themselves at the point of execution."

Here, as in Awards 1489 and 6609, the claim is without merit and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: Carrier's line of road in this dispute runs between Channing and Ontonagon, Michigan. Ontonagon is the terminus of the line extending from Channing, Michigan, to the shore of Lake Superior. Sidnaw, Michigan is approximately halfway between Channing and Ontonagon. There is a regularly assigned telegrapher at Ontonagon and Sidnaw.

Carrier operates Train No. 869 westward, Channing to Ontonagon on Mondays, Wednesdays and Fridays, and eastward Ontonagon to Channing,

as Train No. 882 on Tuesdays, Thursdays and Saturdays. The train and engine crew in each direction is one and the same.

On the Fridays, preceding the Saturdays which are the days involved in this claim, Carrier's dispatcher at Green Bay issued train orders to the telegrapher at Sidnaw who copied and delivered them to the crew of No. 869. The orders and clearance forms were addressed to "C & E all Eastward extra trains at Ontonagon. C & E No. 882 at Ontonagon care Condr. No. 869." The orders were not delivered to "Eastward extra trains at Ontonagon" as there were no Eastward extra trains nor any regularly scheduled trains except No. 882.

Claimant is the regularly assigned agent-telegrapher at Ontonagon. His assigned work week is Monday through Friday, with Saturday and Sunday rest days.

Organization contends that Rule 1(c) of the Agreement was violated when Carrier failed to call the Claimant to handle train orders and clearance forms at Ontonagon for Train No. 882 originating there on the Saturdays in question.

Carrier contends that the orders were duly received, copied and delivered by the telegrapher at Sidnaw to the persons addressed, as Train No. 882 at Ontonagon was one and the same train, engine train and engine crew as Train No. 869.

The pertinent part of Rule 1(c) provides:

"No employe other than covered by this agreement and Train Dispatchers will be permitted to handle train orders, clearance cards, or block or report trains at telegraph or telephone offices where an employe covered by this agreement is employed, and is available or can be promptly located, except in an emergency in which event the employe at such station shall be notified and paid a call."

It has been firmly resolved by numerous awards of this Division that the handling of train orders within the contemplation of the ordinary train order rule means that the sending, receiving, copying and delivery of train orders under Rule 1(c) is reserved to telegraphers or train dispatchers.

Rule 1(c) was made for the purpose of preventing encroachments upon that work to which the Employees in that particular craft were entitled. Carrier cannot under the circumstances of this case where Train No. 869 terminated in Ontonagon on one day and a separately scheduled Train No. 882 originated on the next day be permitted to circumvent or evade the provisions of that rule by the simple device of identity of personnel. The train orders and clearance forms did not call for delivery to a designated individual but called for delivery to the C & E of a separately scheduled train care of the conductor of a separately scheduled train. The fact that the personnel involved on these separate trains was the same cannot change the purpose and meaning of the rule.

When the conductor of No. 869 carried a train order from Sidnaw together with a clearance form addressed to the C & E No. 882 which was to originate at Ontonagon the following day, he was not performing a duty required of the conductor of No. 869 but on the contrary, he was performing the work of a telegrapher. See Award 5087. Orders to the C & E No. 882, the facts and

the working rule in mind, should have gone through and from the telegrapher in whose behalf this claim is presented. See Award 1167.

This Board does not allege authority to direct the Carrier in its method of operation. When, however, its method of operation conflicts with the terms of the Agreement, we cannot hesitate to direct compliance with the terms thereof.

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 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of December, 1961.