Award No. 10239

Docket No. TE-8957

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Walter L. Gray, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE & 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 agreement when on October 19, 1955, it failed and refused to permit R. E. Deso, second shift telegrapher and clerk, Plattsburg, New York, to deliver Train Order No. 213, addressed to C&E Eng 4062, but instead required R. E. Deso to leave said train order 'on window shelf in the waiting room of the station' at the end of his tour of duty (11:00 P. M.) which order was later picked up by a train service employe and delivered to the Conductor and Engineer of train Engine 4062.

2. Carrier shall compensate R. E. Deso for one call as provided in Article 3 (d) of the Agreement.

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

This dispute was handled on the property in the usual manner through the highest officer designated by Carrier to handle such claims. The claim was denied and the dispute failed of adjustment. In accordance with the provisions of the Railway Labor Act, as amended, the dispute involving interpretation of the collective bargaining agreement and not having been adjusted, is submitted to this Division for award. This Board has jurisdiction of the parties and the subject matter.

The dispute concerns the handling of a train order at Plattsburg, New York. Since the claim filed by Local Chairman Deso with Superintendent Sheehy contains the necessary facts, we quote the same herewith:

operating condition and the way work is performed along the lines of this Carrier."

As much as we see in the Employes' argument that could lead to a conclusion the Carrier here has deviated from the usual mode and manner of delivery to avoid paying overtime compensation, Carrier's operating officials have that right, in our estimation, if they have done no more than to direct the manner and method for performing work in accordance with their managerial judgment, and nothing in the Rules Schedule preventing. The proof that some right to manage remains vested in those not covered by the Collective Agreement is found not only in the class of work let and positions enumerated, but the host of operating rules that are in effect alongside the Rules Schedule, and which serve to instruct and direct as to performance of work on positions under scope rules. Furthermore, if employes worked as robots, or always according to a set pattern, or according to their idea of the written word, there would be no occasion for having supervision present to oversee the work and to give directions and instructions as to the manner and method of performing the work, as was done in this case."

"In the instant case the Conductor obtained the train order and clearance for the crew from the register at the office where and when his attendanec was required; and at a place where the Agent-Telegrapher had been instructed to make delivery. The only thing that does not make delivery complete from the Employes' standpoint is that the Agent-Telegrapher was not present to hand the train order to the Conductor."

"This case can be easily distinguished from those where Carriers have resorted to artifice, sharp practice and subterfuge to escape the force of rules or established practice. The record before us is clear that delivery was made at a customary place and in an authorized manner. The Agent-Telegrapher was divested of dominion over and possession of the thing to be delivered, and surrender was complete when, as instructed by proper authority, he placed the train order on the register to be picked up by the Conductor. Thereupon, he was relieved of any further responsibility for custody or safe keeping of the train order and as to him delivery was complete."

The train order in question was handled in accordance with an established practice that has existed without protest or claim until December, 1954. The train order was transmitted by the Train Dispatcher, received by the Telegrapher-Clerk, and picked up and executed by the crew of the train addressed, without assistance from other sources.

The principle involved in this case is the same as that involved in Dockets TE-7745 and TE-8699 which are pending before the Board.

Claim is not supported by agreement rules and established practices thereunder and carrier respectfully requests that it be denied.

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 facts in this dispute have been stipulated as appears in the record at pages 4, 5, and 6. It would be a repetition to set them out in detail.

It is the contention of the Organization that Article 23, Section (a) was violated by the Carrier in that under this provision of the Agreement the handling of train orders at telegraph or telephone offices is restricted to Employes, under the scope of this Agreement, except in cases of emergency, to those persons who are eligible as Railroad Telegraphers.

The Organization further contends that when a train service Employe later picked up the order and delivered it to the Conductor and Engineer of train Engine 4062 that this was a direct violation of Article 23, Section (a).

The Carrier on the other hand takes the position it was never intended by the parties to the Agreement that Telegraphers must personally hand train orders to the train crew to which it is addressed.

The record contains a long list of awards which sustain the position of the Employes.

In fact in Award 9319 the same Claimant, the same place, and the same identical rules were involved as in this dispute.

It is elementary that when a rule has been interpreted by the Courts and by Review Boards and are so overwhelming in number that such a ruling is virtually mandatory. To do otherwise would be to dissent to the majority opinion.

This Board must be bound by the clear language of an Agreement. We cannot read into Article 23, Section (a) anything except what it sets out in unmistakable clarity. It is not a question as to whether we agree or disagree with the language. This Board cannot rewrite or attempt to revise an Agreement entered into in good faith and with full knowledge of its full impact.

This same question has been before this Board many times, and the ruling has, in the main, held that there was a violation of the Agreement, where the facts were found to be as they were in the distant dispute. In view of these many awards this claim imust be sustained.

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 Employe involved in this dispute are respectively Carrier and Employe 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 12th day of December, 1961.