Award No. 10400
Docket No. TE-8618

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Tennessee Central Railway, that:

1. Carrier violated agreement when on April 1, 1955, it required J. C. Usrey, second shift operator-clerk, Monterey, Tennessee, to place train order No. 25 and clearance card addressed to Extra 256, Monterey, in waybill box located outside station building, where such train order and clearance card were later picked up by train service employes about 1:30 A. M., April 2, 1955, after Mr. Usrey had gone off duty at 11:00 P. M.

2. Carrier violated agreement when on April 8, 1955, it required J. C. Usrey, second shift operator-clerk, Monterey, to place train order No. 29 and clearance card addressed to Extra 256, Monterey, in waybill box located outside station building where such train order and clearance card were later picked up by train service employes about 1:30 A. M., April 9, 1955, after Mr. Usrey had gone off duty at 12:00 Midnight.

3. Carrier shall be required to compensate J. C. Usrey an amount equal to one call under the agreement for each of the foregoing dates, total $10.84.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between Tennessee Central Railway Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employes. The Agreement was effective May 1, 1924 and has been amended. The Agreement, as amended, is on file with this Division and is by reference included herein as though set out word for word.

This submission includes two separate disputes handled on the property in the usual manner and through the highest officer designated by Carrier to handle such disputes. Each of the disputes involve the same agreement interpretation and are for convenience submitted in the one submission. This Board under the provisions of the Railway Labor Act, as amended, has jurisdiction of the parties in the subject matter.

Carrier submits that there is no merit to these claims from any standpoint and respectfully requests that they be denied.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employes and is made a part of the particular question in dispute.

The Carrier is making this submission without having been furnished copy of Employes' petition and respectfully requests the privilege of filing a brief answering in detail the ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by the petitioner in relation to such issues.

(Exhibits not reproduced.)

OPINION OF BOARD: The primary facts are simple and not in dispute. At Monterey, Tennessee, the Carrier formerly maintained continuous train order and other telegraph service by employment of telegraphers on three shifts. On April 18, 1954 the Carrier abolished the third trick (shift) position, leaving the train order office at that point, closed between the hours of 10:00 P. M. and 6:00 A. M. daily.

Under date of April 4, 1955, the Organization's General Chairman instituted a claim for J. C. Usrey as Claimant, for a call, alleging that Carrier instructions requiring Claimant to place the train order in the way-bill box, outside the station, so that the train crew addressed can secure them after the telegrapher goes off duty constituted a violation of the Agreement.

The employes contend that Carrier failed to comply with the provision of Article V of the August 21, 1954 Agreement because it did not state its reasons for declining the claim, as required by the Agreement.

We will not discuss the question of whether this question was raised in time by the Employes because the record clearly shows that during the handling of this claim on the property the Carrier officials, notified Claimant representative of the reason for denying the claim.

It is the position of the Employes that the work of handling train orders belongs to them by virtue of their Agreement, and that such work includes the personal delivery of the orders to the crew addressed.

This question has been before this Division many times, most of these disputes involve parties whose Agreement contains the so called Standard Train Order Rule — see Awards 1166, 1169, 1170, 1422 and 1680. The Awards are in conflict, see Award 5871, 7343, 8327, 9445 and 9988.

It is unnecessary to review in details the many Awards which deal with the question of handling train orders, because there is a difference in the Agreement that confronts us in this case, and we are bound by the Agreement before us.

The rule in this case, we quote from the Agreement:

"RULE NO. 12 — HANDLING TRAIN ORDERS

"No employes other than those covered by this agreement shall be required or permitted to transmit or receive train orders or messages by telephone or telegraph except in cases of emergency."

Thus we see that the rule in the case before us limits the rights of the telegraphers to "transmit or receive train orders", and not the handling of the train orders in what is referred to as the Standard Rule. It follows that the claim must 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 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 Agreement was not violated.

AWARD

The Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of March 1962.

DISSENT TO AWARD 10400, DOCKET TE-8618

The majority apparently was confused, not only as to the issue involved, but also with respect to the awards cited.

It is clearly pointless to include Awards 5871 and 7343 in the list of awards dealing with the so-called standard train order rule. Such a rule was not involved in either of those cases. Furthermore, Award 5871 did not involve a factual situation like the present one, and the claim was sustained. A companion case, Award 5872, which I cited and relied upon, did involve a set of circumstances similar to the present one both factually and contractually.

In that award, with respect to indistinguishable circumstances, this Board said, after reviewing numerous awards on the general subject:

> "The clear indication of these observations is that the Scope Rule in and of itself is a grant of rights to the employes covered by the Agreement which rights are secured to them so long as the Agreement is in force, and any infringement amounts to a violation. This as a general attitude toward the Scope Rule is supported by numerous awards. It appears to be a correct analysis.
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> "The so-called train order rule is not a grant of work to the employes covered by the Agreement but is a specific restriction and limitation upon the right of the carrier to allow work covered by the

Scope Rule to be performed by those not covered. It simply under named conditions permits work covered to be performed by others.

"In this light it must be said that the work which is the basis of the claim herein was work covered by the Agreement."

The work which was the basis of that claim was ". . . to leave train orders and clearance cards pinned to the train register for later delivery to the crews of trains leaving after Riggins [the claimant] had gone off duty . . .".

The right of claimant to make personal delivery or be paid a "call" as if he had done so, was sustained on the holding, quoted above, that such work was covered by the Agreement simply and only because of the Scope Rule.

The same reasoning should have been applied here, as it was in Award 5922 and others.

Comparison of Rule 12 with the so-called standard train order rule will clearly show that the observation in Award 5872 would correctly apply to Rule 12. The rule merely permits, under the stated circumstance of "emergency", work covered by the agreement to be performed by others. The rule was so interpreted in Award 6167 which involved these same parties.

For all of these reasons the Opinion of the majority is in error. Therefore, I dissent.

J. W. WHITEHOUSE
Labor Member