

Award No. 10418

Docket No. TE-9363

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Phillip G. Sheridan, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island & Pacific Railroad that:

(1) Carrier violated the provisions of the agreement prevailing between the parties hereto when, on December 10, 1955, at Stuart, Iowa, it required or permitted employes not within the scope of said agreement to handle and deliver train order No. 232;

(2) Carrier shall be required to pay to J. W. Dailey, incumbent Agent-Telegrapher at Stuart, Iowa, one call under the "Call and Overtime" Rule of the said agreement, for such violation.

EMPLOYEE'S STATEMENT OF FACTS: There is in existence between the parties hereto, an agreement bearing an effective date of August 1, 1947 as to rules and working conditions, and of September 1, 1947 as to rates of pay, all applicable provisions of which, as amended, are here invoked. Such rules or provisions, which apply in this dispute, will be quoted as Employees' Statement of Position is developed.

At Stuart, Iowa, respondent Carrier maintains one Agent-Telegrapher position under the scope of the aforesaid agreement. The incumbent claimant, J. W. Dailey, has assigned hours 7:30 A.M. to 4:30 P.M. (with one hour off for meals) Monday thru Friday, rest days Saturday and Sunday. Claimant Dailey and the station at Stuart are under the jurisdiction of Carrier's Superintendent, Chief and Trick Dispatchers at Fairbury, Nebraska, Western Division. Dailey is subject to call for service, while off duty, under the "call" and "rest-day" rules of the controlling agreement.

On December 10, 1955, a Saturday and one of claimant's assigned rest days, at 1:28 P.M., Carrier's Trick Dispatcher issued Train Order No. 232, addressed to a starting engine and train crew at West Des Moines, reading as follows:

been delivered because none was required, there was no violation of the Telegraphers' Agreement or the Special Train Order Agreement of December 7, 1954.

The Carrier's position in this dispute is fully supported by your Board's Award 6609, in which it was said:

" . . . 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."

Because there was no violation of the agreement in this case, the Carrier has declined this claim and respectfully requests your Board to support our declination.

It is hereby affirmed that all of the foregoing is, in substance, known to the Employees' representatives.

OPINION OF BOARD: On December 10, 1955, the Carrier issued Train Order 232 to its Engine 1282 to make a turn around trip from West Des Moines to Stuart, Iowa.

The order read as follows:

"Engine 1282 run extra West Des Moines to Stuart and return to West Des Moines."

A telegrapher at West Des Moines copied that order from Carrier's Train Dispatcher, and said telegrapher delivered it to the crew members of 1282. No one else handled the order. The order was at all times thereafter held by the crew on the 1282; it was for no one's use other than their own. They delivered it to no one else. This order authorized them to run from West Des Moines to Stuart and return, a turn around trip, which was accomplished in a single tour of duty. There were no additional orders.

There was no telegrapher on duty on the day in question, it being his assigned day off, but he claims a call for this day because Employees not under his Scope Agreement handled and delivered Train Order No. 232.

The question is whether the crew on Extra 1282 can be said to have delivered Order No. 232 to themselves at Stuart.

The pertinent Agreement between the parties or particular section thereof is Rule 24, and specifically Section 3 of the supplemental application thereof, to-wit:

"At points where telegraphers are employed and train orders and/or clearance cards are delivered by one train to another at such location, employees shall be paid a call as provided in Rule 24."

We believe the aforesaid Rule (Supra) provides for payment only when orders are delivered by one train to another i.e. under circumstances where one train met or overtook another train and there was no telegrapher on duty where this type of delivery was effected.

In the instant case, the crew of 1282 received Order No. 232 to run extra to Stuart and return to West Des Moines. The order was not completed at Stuart, it would be completed at West Des Moines. By the very nature of Order No. 232, it wasn't necessary to receive new orders at Stuart. Train Orders are not fulfilled until it is completed.

In this case we have the same crew and the same train. There were no Employees outside the Agreement that handled or delivered Order No. 232. See Awards 9223, 3779, 4819, 6609.

We find nothing in the rules that prohibits a round trip order, and there are no provisions in the rules requiring orders to be delivered at their point of execution. Here they were delivered by the proper person within the Agreement to the proper persons.

We read with meticulous care the many awards of this Board submitted by the claimant on the theory that these past precedents sustained their position. They are all distinguishable on the facts.

Therefore, the claim 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 Employees 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 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 4th day of March 1962.