Award No. 10442

Docket No. TE-8810

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Walter L. Gray, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad, that:

1. Carrier violated the agreement between the parties when on the 25th day of July, 1955, it caused, required or permitted Conductor Pool, Extra 1500 West, to handle train order No. 12 at Kimbrough, Ga.

2. Carrier shall be required to compensate the senior idle telegrapher, (extra in preference) for a day's pay (8 hours) at the minimum telegrapher's rate for such violation.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between the Seaboard Air Line Railroad, hereinafter referred to as Carrier or Management and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was effective October 1, 1944, and has been amended. The Agreement, as amended, is on file with this Board and is, by reference, included herein as though set out word for word in this submission.

This dispute was handled in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. The dispute involves interpretation of the collective bargaining agreement and having been handled on the property in the usual manner through the highest officer and having failed of adjustment, is properly submitted to this Board under the provisions of the Railway Labor Act, as amended.

The claim involves the handling of a train order at a junction point, Kimbrough, Ga., by a train service employe on July 25, 1955. Employes contend that the Agreement was violated in permitting such train service employe to handle the train order and requested that the Carrier compensate the senior, idle telegrapher for one day (8 hours) for such violation.

At Kimbrough, Carrier does not maintain regular service under the Telegraphers' Agreement. Such point is what is called a blind siding. Although there are no employed covered by the Telegraphers' Agreement at such point, there is a telephone providing direct communication with the Carrier's train dispatcher's office.

"The Organization contends that the Carrier has settled numerous claims of a similar nature at the overtime rate of time and one-half. It is asserted that this constitutes a practice which is binding upon the Carrier. We think not. Rates of pay, including penalty rates, are determinable from the contract. It could not be said that an employe paid less than the contract rate of his position over a period of time could not recover the deficiency because a practice had been created. The Agreement is superior to a practice. Neither can the Carrier be restrained from correcting an erroneous application of rates of pay, including penalty rates, on the theory that a practice has arisen. Compensation for work is contractual and therefore superior to any alleged practice."

It is the duty of your Honorable Board to interpret the Agreement as written and in order for a claim to be sustained you must find authorization within the Agreement. We very emphatically assert that the agreement may be searched from stem to stern and nowhere therein will there be found authority for sustaining this claim. We also wish to state that your Board has consistently held that the burden of proof rests with Petitioner.

Carrier affirmatively states that all data used herein has been discussed with or is well known by the General Chairman of the petitioning organization.

(Exhibits not reproduced)

OPINION OF BOARD: This is a dispute between the Order of Railroad Telegraphers and the Seaboard Airline Railroad Company for an alleged violation of an Agreement between said parties, said Agreement having become effective as of October 1, 1944.

It is necessary for us to consider this Agreement in its entirety and to determine whether there was a violation of the Agreement when a conductor copied a train order at Kimbrough, Georgia. It is stipulated that this station was one where no telegrapher was employed.

The Organization contends that such work is exclusively covered by the Agreement and cites Rule 1 Scope:

"This agreement will govern the employment and compensation of agent-telegraphers, agent-telephoners, division car distributor-operators and report clerk-operators, telegraph and telephone operators (except switchboard operators), clerk-operators, morse-teletype operators, towermen-telegraphers, towermen-telephoners, levermen, levermen-operators, and also such station agents, assistant station agents and ticket agents as are listed herein."

It is the further contention of the Organization that there was a further violation of the Agreement and that Rule 24 is directly in point and was violated by the Carrier. Said rule reads as follows:

"No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in emergency, in which case the operator will be paid for the call. It is not the purpose of the management to require other than those covered by this agreement and train dispatchers to handle train orders, excepting under conditions of an

emergency nature, such as accidents, personal injury, washouts, fires, engine failures, or such other similar causes. Advice that train orders were handled in such emergencies will be promptly furnished the operator at the office where handled, so that claim for call may be made. At offices where two (2) or more shifts are worked, the operator whose tour of duty is nearest the time such orders were handled will be entitled to the call."

Both parties have submitted voluminous briefs and awards to be considered in the disposition of the controversy. If the Scope Rule does not bring the communication complained of herein within the purview of the Agreement, then it follows that such work lies outside the Agreement.

It is the contention of the Carrier that the language of the Scope Rule does not define or prescribe work; that what it does do is to name the Employes covered by the Agreement.

In Award 6824 (Shake) it was held, "Since the Scope Rule of the effective Agreement is general in character and does not undertake to enumerate the functions embraced therein, the Claimants' right to the work which they contend belonged exclusively to them must be resolved from a consideration of tradition, historical practice and custom; and on that issue the burden of proof rests upon the Employes."

If the Scope Rule should have enumerated the job classifications instead of job title, then this Board would be compelled to hold that all work described in such classifications belonged exclusively to the telegraphers. However, we do not so find.

It is well known that over the years there has been a rapid retrenchment on the part of the railroads. Many small railroad stations throughout the nation have disappeared. They have been closed through necessity. As a matter of fact, there has been found to be public policy to grant such authority when stations are no longer necessary to serve the public convenience and necessity.

The Carrier has asserted that through practice, custom and tradition, the handling of train orders at such points where telegraphers are not employed, had been of necessity handled in the manner as done in this case.

A careful reading of Rule 24, which says, "No employe other than covered by this Schedule and train dispatchers will be permitted to handle train orders **at telegraph or telephone offices where an operator** is employed, etc.", reveals it means exactly what it says.

We feel that this entire question was well covered by Referee Coffey in Award 6959. This rule had been followed in many other awards and certainly any rule must be read in its entirety and not out of context. If it is read in its entirety then it must be construed to mean that it deals only with the handling of train orders at telephone or telegraph offices where an operator is employed.

In Award 6856 by Carter it was held, "It is presumed that all of the contentions and arguments of the parties are merged in the written Agreement. A party is not permitted to go behind his written Agreement and offer special knowledge on the intent of plain provisions, etc."

The Organization has stressed very vigorously the point that representatives of the Carrier in certain letters have conceded the position of the Organiz-

ation and that by their letters they have ratified the position taken by the Organization.

The Courts have repeatedly held that the Agreements must speak for themselves and that no changes can be made unless the Agreement itself is corrected and ratified by both parties.

From the reading of the various awards cited by both parties, it appears that these many varying opinions have brought instability rather than stability and that until such time as an Agreement is made and entered into resolving the questions presented in this dispute, there will be no final disposition of this controversy.

Every effort should be made to protect the rights of the working man as far as it is possible and certainly this is the disposition of the modern era. If an Agreement is not clear and concise then it should be re-negotiated to correct any omissions. This case was decided entirely on the facts as shown in the record.

Since we have disposed of the controversy on the points above set forth, we can see no useful purpose in discussing other questions raised in the controversy and the claim is, therefore, 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 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1962.