Award No. 10604

Docket No. TE-9144

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

David Dolnick, 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. The Company violated the Scope Rule of the Agreement between the parties when it permitted or required Trainmaster O. T. Hall, to perform the duties of a Telegrapher, viz., copying and/or handling train orders and other communications of record at Watts, South Carolina (a blind siding) on August 19, 1955.

2. The Company shall now compensate C. K. Harrison (who was the available senior idle Telegrapher) for a day's pay at the time and one-half rate, for August 19, 1955.

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 Telegrraphers. The Agreement was effective October 1, 1944, and has been amended in several respects. 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.

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

This claim involves the handling of train orders by Trainmaster at Watts, South Carolina. Employes contend their Agreement was violated in permitting the Trainmaster, an official, to handle the train orders and request that Carrier be required to compensate C. K. Harrison for one day's pay for the date of such violation, i.e., August 19, 1955.

On August 19, 1955, the Train Dispatcher, by the use of the telephone, transmitted and dictated to Trainmaster Hall, an official of the Company, train orders Nos. 63 and 64 at Watts, South Carolina. The train orders were in words and figures as follows:

The handling of this dispute by the Organization in the manner recited above is clearly not in conformity with the spirit or intent of the Railway Labor Act as it does not allow for either prompt or orderly settlement of the dispute.

Therefore, without prejudice to the Carrier's primary position that the instant claims are without support of either agreement provisions or practice on the property, it is further the position of the Carrier that this claim and all similar subsequent claims progressed to the Adjustment Board should be dismissed as not being properly presented to the Board, for the reasons set out above. See Third Division Award 5445, etc.

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: The facts are not in dispute. On August 19, 1955, a Trainmaster received train orders on the telephone, copied them and then delivered them to the Conductor and Engineer to whom they were addressed. No telegrapher was employed at Watts, South Carolina, where these train orders were received, copied and delivered. Trainmaster Hall was at Watts "to supervise re-railing the cars and track repairs." The train orders came over the telephone while the Trainmaster was there to supervise other work. The Organization claims that these orders "could have been given to work extra 1780, at Calhoun Falls, where an operator was employed and on duty at the time the work extra passed that point."

The Organization relies on the Scope Rule, an alleged Agreement on its meaning and intent, and past practice contained in correspondence between the parties and on Rule 24. The Scope Rule reads:

> "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, tower-telegraphers, towermen-telephoners, levermen, levermen-operators, and also such station agents, assistant station agents and ticket agents as are listed herein."

We have consistently affirmed the principle so well expressed in Award 6824 (Shake):

> "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 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."

The Scope Rule does not define the work which belongs exclusively to the telegraphers; neither does it indicate the circumstances of performance under which the Organization has jurisdiction. It merely lists the job titles covered by the Agreement. Its general character requires that we examine other pertinent Rules in the Agreement as well as the tradition, historical practice and custom which may apply to this claim.

The Organization emphasizes that the Carrier has given interpretation to the Scope Rule which gives meaning to its interpretation. An examination of such letters reproduced on Pages 95 to 101 of the record does not establish a firm and convincing interpretation of that Rule nor does it establish a fixed custom and practice upon which we can rely. Some of this correspondence refers to an isolated claim with the proviso "that the Company will be allowed the privileges in the future, if it elects to do so, of establishing an assignment whereby one operator will be used to copy train orders at Coronet Junction and 831-Mile Post for the Coronet Phosphate train, and that this settlement does not in any way establish a settlement." In another letter the Carrier said that it had "been endeavoring to put on an agent-operator at Barrelville, but so far, . . . have been unable to employ anyone for this work and have not had a qualified extra operator available to send there". Some letters do not indicate whether the claim arose at those points where no telegrapher was employed.

Furthermore, we are obliged to examine the entire Agreement between the parties. Letters and dispute settlements may give meaning and intent to an Agreement, but it may not abrogate its clear and unambiguous language. This can only be done by Supplemental Agreement jointly agreed to and executed.

Rule 24 provides:

> "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."

The first sentence of this Rule is clear and unambiguous. It 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 . . .**" What follows does not change this underlined proviso. It merely states the policy to be followed where an operator is employed. No operator was employed at Watts, South Carolina.

Award 8687 (Lynch) relied upon by the Organization is distinguishable. There, the Board relied upon a letter written by the Carrier. But the terms were not incorporated into the Agreement. There was not provision in that Agreement similar to Rule 24 of the Agreement at hand.

The Organization has also stressed the fact that because the Carrier offered to settle this claim, it had acknowledged its validity. We do not agree. A Carrier may frequently find it expedient to dispose of a claim without acknowledging its liability. In the offer made to the Organization, the Carrier specifically said that it was done "without prejudice, will not establish a

precedent and, furthermore, the method of disposal will not be referred to by either party in the future."

We hold that Award 10442 (Gray) is not palpably erroneous and should not be overruled. We further hold that the ruling therein is applicable to the facts in this case.

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 Carrier did not violate the contract.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1962.