

Award No. 10672
Docket No. TE-9153

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert J. Ables, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LOUISVILLE AND NASHVILLE RAILROAD CO.
(The Nashville, Chattanooga and St. Louis District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Nashville, Chattanooga and St. Louis Railway, that:

(1) Carrier violated the Agreement between the parties when on January 14, 1954, and June 30, 1954, it required or permitted a train dispatcher at Cowan, Tenn., an employe not covered by said Agreement, to handle train orders and clearance cards outside the regularly assigned hours of the Agent-Operator at this Station.

(2) Claimant T. L. Ervin, regularly assigned Agent-Operator at Cowan, Tenn., entitled to perform said work be paid a call of two (2) hours at the time and one-half rate of the position occupied, because of said violation.

EMPLOYES' STATEMENT OF FACTS: There is in evidence by and between the parties to this dispute effective September 1, 1949, as revised.

Cowan, Tennessee, is a station on The Chattanooga Division of Carrier's Railroad, located on the main line at Mile Post 197.9 miles from Atlanta, Ga., and 87.3 miles from Nashville, Tennessee.

Cowan is the originating as well as the terminal station for trains destined to points on the Tracy City Branch of Carrier's railroad, which extends out from Cowan to Palmer, Tennessee.

In the current issue of the Official Guide of the Railways, etc., at page 575, is reproduced time-table No. 17 showing the service Carrier maintains between Cowan and Tracy City. This service consists of one mixed train operating tri-weekly between Cowan and Tracy City, (freight and passenger), with freight service only between Tracy City and Palmer.

The Carrier also provides taxi service between Cowan and branch line points, listed under the caption "A" of the time table, in connection with passengers holding certain types of tickets detraining at Cowan for points on the Tracy City Branch.

patchers delivered train orders and clearance cards at a time when the telegraphers employed at the point involved were not on duty.

The telegraphers claim was denied, the Board ruling that the work complained of was work related to the movement of trains by train orders, which the dispatchers were entitled to perform under rules similar to Article 15 involved in the instant case.

Award 6379: This case involves claim of dispatchers based on the contention that they performed duties of telegraphers in being required to copy and deliver train orders and clearance cards.

The telegraphers agreement involved, provided:

"No employe other than those covered by this agreement and train dispatchers, shall be required or permitted to perform telegraphing or telephoning in connection with the movement of trains except in case of bona fide emergency."

The dispatchers' claims were denied, the Board ruling that the duties described were not in violation of the agreement.

Thus it will be noted that this Board has interpreted rules essentially the same as Article 15 here involved, in both Telegraphers' and Dispatchers' claims, to the effect that copying and delivering train orders is not exclusively the work of telegraphers and that dispatchers performing such work is not violative of the telegraphers agreement.

The instant claim, as evidenced by the Employees' Statement of Claim, is based on the contention that the Telegraphers' Agreement was violated by a train dispatcher being required or permitted to handle train orders and clearance cards outside the regular hours of claimant.

The Employees' position is, therefore, necessarily based on the contention that the work of handling train orders and clearance cards is exclusively the work of telegraphers and that the provisions of the Telegraphers' Agreement prohibits dispatchers from performing such work.

As heretofore shown, there is nothing in the provisions of Article 1, or any other article of the Telegraphers' Agreement, which supports the Employees' contention that the handling of train orders is exclusively telegraphers' work. To the contrary, the exception contained in Article 15 specifically permits train dispatchers handling train orders.

It is, therefore, evident there is no contractual basis for the Employees' claim and same should be denied.

All matters referred to herein have been presented, in substance, by the Carrier to representatives of the employes, either in conference or correspondence.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue in this case is whether under the

Standard Train Order Rule it is a violation of the Telegrapher's Agreement for a dispatcher to handle a train order at a station where a telegrapher is employed.

The facts are not in dispute. Trains operating on a branch line, which diverges from the main line at Cowan, Tennessee, must have train orders. Train orders are handled by the two telegraphers assigned to the Station when they are on duty. But when such orders are required at times when no telegrapher is on duty train dispatchers prepare and deliver them to the train crews. It is this method of handling train orders that is questioned by the Telegraphers.

The Employees contend that the Agreement of the parties reserves to the telegraphers all the work of handling train orders. They emphasize that the traditional duties of train dispatchers and telegraphers must be recognized—one complementing and not trespassing the other.

The Carrier denies that the work of handling train orders is reserved exclusively to telegraphers. It maintains, by reference to long standing operating instructions, that it has been practice on this railroad for dispatchers to handle train orders. In addition, and most importantly, the Carrier cites the so-called Standard Train Order Rule (Article 15 in this case) to show that the applicable rule specifically authorizes dispatchers to handle train orders at stations where telegraphers are employed.

The same question as involved here has been decided in a number of previous awards. Almost uniformly they have sustained the Carrier's views. Awards: 6650 (Rader), 9445 (Johnson), 9914 (Begley) and 9217 (Hornbeck), among others.

These decisions seem to be clear and convincing authority for the view that dispatchers may handle train orders as they were handled in this case. No persuasive authority has been cited to the contrary. Therefore, the precedent will be followed here.

One last contention of the Employees must be considered. Argued before the referee, and not previously, was the contention that the claim must be sustained because the dispatcher did not handle the train order "at a telegraph or telephone office" as required by the rule. The basis for this argument is the fact that the Train Dispatcher's Office at Cowan is located in a separate facility from that of the telegraphers. The distance between the two facilities is about 600 feet.

This information was included in the record in the Employees "Statement of Facts" but no argument was made involving such information.

Probably, this late contention of the Employees need not be considered because of the familiar and well established rule that issues may not be raised before the Board that were not raised on the property. But we will not decide the question on these grounds since it would taint the award here as being based on a technicality. The better grounds for rejecting this contention may be found in the claim as submitted by the Employees.

The claim states that the Carrier violated the Agreement "when it permitted a dispatcher at Cowan, Tennessee . . . to handle train orders and clearance cards outside the regularly assigned hours of the Agent-Operator at this Station" (Emphasis ours). Clearly the Employees considered the work of the dispatcher and the telegrapher to have occurred at the same place—

the station at Cowan, Tennessee. The absence of any discussion of the point in the record confirms this. Accordingly, we hold that for the purposes of this claim the dispatcher handled train orders at telegraph or telephone offices where an operator was employed.

Therefore, in view of all the findings herein 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 Employees 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 13th day of July, 1962.