

Award No. 10714

Docket No. TE-8943

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert J. Wilson, Referee

PARTIES TO DISPUTE:

ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware and Hudson Railroad, that:

1. Carrier violated Agreement between the parties hereto when on the 18th day of June, 1955, it caused, required and permitted Assistant Trainmaster Dustin, a Carrier official, to handle (receive, copy and deliver) Train Order No. 3 at Colonie, New York.

2. Carrier shall compensate Alfred J. Nealer as provided in call rule of Agreement for the violation above set out.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an agreement, effective July 1, 1944, entered into by and between the Delaware and Hudson Railroad Corporation, hereinafter referred to as Carrier or Company, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employees. The agreement is, by reference, included in this submission as though set out herein word for word.

This dispute was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes. The claim was denied and the dispute remains unadjusted.

The dispute involving interpretation of the collective bargaining agreement, and having been handled on the property in accordance with the requirements of the Railway Labor Act, as amended, and the rules of this Board, is properly submitted to this Board for award.

At Colonie, New York there is one position covered by the Telegraphers' Agreement. The classification of the position, agreed to by the parties, is Telegrapher and Clerk, and the location is shown as Colonie Yard. The position is, by the Carrier, designated as a five day position, assigned work days Monday through Friday, with Saturday and Sunday as assigned rest days.

to change this, more definite language to that end should have been added in the Scope Rule or at some other point in the Agreement. Failure to do this in 1939, and failure to do it in the 1946 negotiations leads us to the conclusion that the parties have not agreed to change the long-established practice. It is a matter for further negotiation. It is not for us to read into the language of the Scope Rule something which the parties themselves have quite obviously omitted."

The claim is not supported by agreement rules and practices thereunder and carrier respectfully requests that it be denied.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Claim is made that the Carrier violated the Agreement when it permitted or required the Assistant Trainmaster, a company official to handle a Train Order at Colonie, New York.

There is one position of Telegrapher and Clerk located at Colonie with a five-day week and with Saturday and Sunday as rest days.

On June 18, 1955 the Assistant Trainmaster, an official of the company, obtained a Train Order by telephone at "S.G." Cabin in the Colonie Yard. Thereafter he delivered the Order to the Conductor and Engineer of Extra 4009. The Carrier claims that "S.G." is .8 of a mile from "G.W." while the Organization claims it is .3 of a mile. No telegrapher has been employed at "S.G." since prior to December 1936.

The Organization bases its claim on Rule 23(a), the pertinent part of which reads as follows:

"The handling of a train order at telephone or telegraph offices is restricted to employees under the scope of this agreement and train dispatchers, except in emergency." . . .

It is agreed by both parties that there is no emergency involved in this dispute.

The Carrier contends that S. G. Cabin is not a telephone or telegraph office and Rule 23 has no application in this case. Further that the Scope Rule of the Agreement is general in nature and that under custom and practice at non-telegraph points train orders are issued to other than telegraphers.

On the other hand the Organization bases its claim on Rule 23 and takes the position that the train order in question was handled at Colonie

where there is a regularly assigned telegraph clerk and which is a telegraph and telephone office under the Rule.

It appears to us that the basic issue in this case is whether or not S. G. Cabin, where the train order was handled, is or is not a telegraph or telephone office.

It has been held many times that where a rule is clear and unambiguous that this Board is bound by its language. This Board cannot read anything into Rule 23 except that which is clearly stated.

The rule clearly specifies that it only applies to train orders handled at telephone and telegraph offices. It is clear and unambiguous in its language in this respect.

"S.G." Cabin is located some distance from "G.W." in the Colonie yard.

To find for the Claimant we would have to hold that the entire yard at Colonie constitutes the telegraph or telephone office.

If the rule intended to cover the yard it could have specified by so stating.

There is nothing in the Agreement which we could find that requires that Train Orders be issued only at telegraph or telephone offices.

In view of the facts and circumstances of this case we do not believe that we can say that "S.G." Cabin which is located in the yard is a telegraph and telephone office and therefore it is our opinion that Rule 23(a) does not apply. This Board has no right to extend the coverage of the clearly stated Rule.

Since the Scope Rule of the Agreement does not give the work exclusively to the telegraphers and since Rule 23(a) does not apply, the claim must be denied.

The Contract was not violated.

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 26th day of July 1962.