Award No. 10782
Docket No. TE-8749

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Richard F. Mitchell, 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 Iine Railroad that:

1. Carrier violated the agreement between the parties hereto when on the 25th day of May, 1955, it caused, required and permitted Conductor of work extra 1514 to handle (receive copy and deliver) train order No. 92 at Benevolence, Georgia.

2. The Carrier violated the agreement when on the 26th day of May, 1955, it caused, required or permitted Conductor of extra 1512 to handle (receive, copy and deliver) train order No. 14 at Kimbrough, Georgia.

3. Carrier shall compensate W. C. Castelow for one day's pay (eight hours) at the minimum telegraphers rate on seniority district wherein Benevolence and Kimbrough are located for each day of violation as above set forth.

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 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 question of handling train orders by train service employes at Benevolence and Kimbrough, Georgia on May 25 and 26, 1955. Employes contend that their Agreement was violated in per-

evidence and proof of the practice over the years we attach Carrier's Exhibits B-1 to B-36, inclusive, which are self-explanatory.

The Employes will probably contend that because a claim for a day's pay was allowed Operator Bowen on February 11, 1955, Operator Hewitt on February 26, 1955 and Operator Bowen on March 2, 1955 by the Superintendent of the Alabama Division, this is proof that the claim herein should be sustained. If such contention is advanced, we think it will gain the Employes nothing because the Superintendent simply made an error in allowing the claims. An error in paying claims that are not valid certainly does not change the Agreement. The payment of these three claims would not constitute a practice. You very appropriately held in Award 4534 that:

> "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 claim involves the question of handling train orders by train service employes at Benevolence and Kimbrough, Georgia on May 25 and 26, 1955. Employes contend that their Agreement was violated in permitting the train service employes to handle the train orders, and request that Carrier be required to compensate W. C. Castelow for one day's pay for each day of violation.

At Benevolence and Kimbrough, Georgia, Carrier does not have regularly assigned employes at such stations under the Telegrapher Agreement. They are in railroad parlance designated as blind sidings. Although there are no employes covered by the Telegraphers' Agreement stationed at either point, there is a telephone providing direct communication with Carrier's train dispatcher office.

There has been recently decided by this Division four cases, involving the same issue, on the same railroad, between the same Organization and under the same Agreement all denying the claims. In this case the em-

ployes claim because the Superintendent on June 2, 1955 agreed to pay the claim the Carrier is bound by that Agreement. However, the record shows that on June 24, 1955 the Superintendent withdrew the offer. Thereafter the claim was denied on the property and appealed to this Board. The mere offer to pay which was shorty withdrawn does not bind the railroad, and the facts in this case are the same as in Awards #10442, 10604, 10606 and Award #10605.

We quote from Award 10442:

"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."

Awards 10442, 10604, 10605 and 10606 are controlling in this case, and the claim must 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 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 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 19th day of September 1962.