

Award No. 10872
Docket No. TE-9524

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO GREAT WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway that:

1. Carrier violated the agreement between the parties when it required or permitted employees not covered by the agreement to handle train orders.

2. Carrier be required to compensate in amount of a day's pay at the applicable rate for each violation: L. S. Hickie on November 17, 1955; E. A. Genz on December 6, 1955; F. C. Kitchen on January 16, 1956; E. H. Oliver on February 28, 1956; A. W. Reed on March 3, 1956; and E. T. Healey on March 14, 1956.

EMPLOYEES' STATEMENT OF FACTS: The Agreements between the parties to this dispute are available to your Board and by this reference are made a part hereof.

On November 17, 1955, the train dispatcher issued the following train order to Train No. 143:

"TRAIN ORDER NO. 67

Nov 17 1955

To C&E No. 143 at Graf via Fairground

No 90 Motor 105-A wait at Almorat until 910 PM for No 143
Motor 191-C

EGJ"

Conductor Gorney of Train No. 143 handled, (received, copied and delivered) this train order at Graf; it was transmitted to the conductor by the telegrapher at Fair Ground. There was no emergency condition existing at this time.

On December 6, 1955, the train dispatcher issued the following train order to Work Extra 58:

what they failed to secure on the property in 1939 and 1945-1948, i.e., a new rule which will give them the exclusive right to handle all communications including train orders. We respectfully call attention to the fact that this Division has consistently held that its duty is to interpret existing rules, not to write new rules — see Awards 4763, 6096, 6107, 6205, 6339, 6365, 6611, 6695, 6707, 6828, 6912, 7093, 7153 and others.

This Division also has held:

“The burden of establishing facts to require or permit the allowance of a claim is upon him who seeks its allowance.” (Award 4011 — also, see Awards 6829, 6828, 6824, 4758, 3523, 3477, 2577 and others.

CONCLUSION

This claim is not based upon any supporting rule of the contractual agreement but rather upon the unsupported theory that certain work “historically, traditionally and customarily” flows to employees under the Telegraphers’ Agreement. In the handling of the case on the property the Employees failed to produce any evidence in support of their theory. Damages are not awarded on theory alone and there must be compelling proof in support of that theory. Under the Railway Labor Act, this Division is required to give effect to the collective Agreement and adjudicate this dispute in accordance therewith. On the basis of that Agreement, the practice thereunder and the Awards of this Division in similar cases, claim should be denied.

Carrier’s Exhibits “A” and “B” are attached hereto and made a part hereof as if fully set forth herein.

The Carrier affirms that all data in support of its position has been presented to the other party and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This cause involves claims by six employees of the Organization arising out of the receiving and copying of train orders at a closed station — in each instance by a Conductor which Claimants contend was in violation of the Telegraphers’ Agreement. On each and every occasion the order was relayed to a Conductor by a Telegrapher and in no case was the train order received or copied by a Conductor directly from the Train Dispatcher. At each and every occurrence the train order was copied by a Conductor at a location where a Telegrapher was not employed.

Between the identical parties, the exact questions presented here were considered in Award (10535) (Ables), dated April 20th, 1962. The Opinion in that award was based in part on an interpretation of Addendum No. 3 of the Agreement. It is the contention of the Claimants that such interpretation was palpably erroneous.

Addendum No. 3 is, in part, as follows:

“In settlement of the employees’ request for a rule to govern the handling of train orders, messages and/or reports of record by train and engine service employees, it is agreed that train and/or engine service employees will not be required to call dispatchers on telephone in connection with train movement or take train orders over the telephone, except in emergency.”

It is the contention of the Claimants that the language used in the Addendum does not couple "take train orders over the telephone" with the Dispatchers.

What the Claimants are attempting to do here is to isolate — "or take train orders over the telephone" — and conclude it to be independent of the language that preceded it. It is very obvious from reading Addendum No. 3, as cited here, in its entirety that what was being agreed to was the conduct of train and/or engine service employees in respect to calling dispatchers on the telephone in connection with train movements or taking train orders over the telephone from them. We cannot, therefore, find that it had anything to do with taking train orders over the telephone from telegraphers.

There was no error in Award 10535 and if we are to have stability in these awards we must find that it is controlling in the matter before us.

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 29th day of October 1962.