Award No. 10913
Docket No. TE-9454

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad, that:

1. Carrier violated the Agreement when on March 5, 1956 it required or permitted Mr. Parks, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 44 at Newfield, N. Y. Carrier again violated Agreement when on March 7, 1956 it required or permitted Mr. Baylor, a maintenance of way employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 36 at Newfield, N. Y.

2. Carrier violated the Agreement when on April 23, 24, 25, 26 and 27, 1956 it caused, required or permitted Section Foreman Brill, driver of track car 7364, to handle (receive, copy, repeat and deliver) train orders (Form 19) Nos. 38, 34, 41, 34 and 39, respectively, at Geneva Junction, N. Y.

3. Carrier violated the Agreement when on May 21, 22, 23 and 25, 1956 it caused, required or permitted Section Foreman Venturino and/or Section Foreman Gallow, employes not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) track car permits (Form T.C.) at Geneva Junction, as follows:

Date 1956	Driver of T.C. who handled permit	Track Car No.	Permit handled at	Track Car Destination	Time permit issued by Train Dispatcher
5-21	Venturino	7334	Geneva Jct.	Geneva	2:05 PM
5-22	Gallow	7406	" "	"	10:35 AM
5-22	Venturino	7334	" "	"	1:30 PM
5-23	Venturino	7334	" "	"	1:55 PM
5-25	Venturino	7334	" "	"	1:02 PM

4. Carrier violated the Agreement when on May 23, 1956 it caused, required or permitted Conductor Smith, an employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) train order No. 47 at Lockwood, N. Y.

5. Carrier violated the Agreement when on July 2, 1956 it caused, required or permitted Section Foreman Baylor, driver of track car 7341, an employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) train order No. 44 at North Spencer, New York.

6. Carrier will be required to compensate the senior idle employe, extra in preference, on Seneca District, for 8 hours, at minimum hourly telegrapher (telephoner) rate on such district, for each and every day and date of violation as set forth in Paragraphs 1, 2, 3, 4 and 5.

7. Carrier will be required to permit joint check of its records for purpose of determining names of employes entitled to compensation as aforesaid and for the further purpose of ascertaining subsequent violations, in the manner hereinabove set out, at the stations shown herein.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between the Lehigh Valley Railroad, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers, governing rates of pay, rules and working conditions for employes covered thereby. The agreement was effective February 1, 1948 and is by reference made a part hereof as though copied herein word for word. The disputes submitted herein involve interpretation of the collective bargaining agreement; were handled on the property in the usual manner, to and including the highest officers designated by Management to handle such disputes. Management has declined the claims of Employes and the disputes remain unadjusted. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the parties and the subject matter.

This submission involves five separately handled disputes, but for convenience and similarity of issues they are submitted in this single submission. In the Statement of Facts we shall refer to the substantive violation set forth in Paragraph 1 of the Statement of Claim arising at Newfield, New York as Case No. 1; the violation set forth in Paragraph 2 of the Statement of Claim, arising at Geneva Junction, New York, as Case No. 2; the claim set forth in Paragraph 3 of the Statement of Claim, arising at Geneva Junction, New York, as Case No. 3; the claim set forth in Paragraph 4 of the Statement of Claim, arising at Lockwood, New York, as Case No. 4 and claim set forth in Paragraph 5 of the Statement of Claim, arising at North Spencer, New York, as Case No. 5. Paragraph 6 of the Statement of Claim involves compensation for the violations alleged in Paragraphs 1 to 5, inclusive, of the Statement of Claim. Paragraph 7 requests joint check of the records to determine the names and amounts due employes for the violations set forth in Paragraphs 1 to 5, inclusive, of the Statement of Claim and, in addition, a check to determine subsequent violations in the same places arising out of similar factual circumstances.

It is specifically spelled out in Rule 32 that at points where no operator is employed it is quite clear that handling orders at such points is not exclusively reserved to the Telegraphers. In view of said rule, Carrier asserts that the Organization cannot establish the burden of proof necessary in these claims, and as so often held by this Division that burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks such allowance. See **Awards Nos. 4011, 5135, 5329, 5345** and others.

The claims herein should be denied.

The facts presented in this submission were made a matter of discussion with the Committee in conference on the property.

OPINION OF BOARD: This submission presents 5 disputes. In each dispute it is claimed the Carrier violated the current Telegraphers' Agreement because a train order or track car permit (messages of record) was handled by an employe not covered by the Telegraphers' Agreement. At none of the points where the dispute arose was a Telegrapher employed. The Carrier denies any violation of the Agreement.

The issue thus raised, in several different aspects but dealing with the same rules on this property, has been before this Division a number of times. See Awards 8146, 8540, 9999, 10060, 10061 and 10863.

When the Division has previously considered and disposed of a dispute involving the same parties, the same rule and similar facts presenting the same issue as is now before it, the prior decision or decisions should control. Any other standard would lead to chaos.

The issue involved in this claim has heretofore been determined adverse to the contention of the Claimant. (see awards listed above). In the absence of any showing that such awards are patently erroneous (and no such showing was made) we must follow them and find that there has been no violation of the Agreement as alleged. The claims will, therefore, 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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1962.