Award No. 10917

Docket No. TE-9564

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

TENNESSEE CENTRAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Tennessee Central Railway, that:

1. Carrier violated agreement between the parties hereto when on June 7, 1956, it required J. C. Usrey, second shift operator-clerk, Monterey, Tenn., to place train order No. 25 addressed to C&E Eng. 252, Monterey, in waybill box located outside station building, where such train order was later picked up by train service employes about 4:15 A. M., June 8, 1956, after Mr. Usrey had gone off duty at 11 P. M. (June 7, 1956).

2. Carrier shall be required to compensate J. C. Usrey for one call, for violation set forth in Paragraph 1.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between the Tennessee Central Railway Company, hereinafter referred to as Carrier or Management and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employes. The Agreement was effective May 1, 1924 and has been amended. The Agreement as amended is on file with this Division and is by reference included herein as though set out word for word. The dispute submitted herein was handled in the usual manner on the property through the highest officer designated by Carrier to handle such disputes. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the parties and the subject matter.

J. C. Usrey is the owner of the regular second shift assignment at Monterey, Tenn. At the time this claim originated his assigned hours were 3 P. M. to 11 P. M.

On June 7, 1956 at 9:59 P. M., Operator-clerk Usrey in the performance of his duties was directed to and did receive and copy from the train dispatcher train order No. 25. The order was as follows:

It is undisputed that the train order in question was received and copied by operator-clerk Usrey, an employe covered by the applicable agreement. When this had taken place, the obligation imposed upon the Carrier had been fully discharged.

The fallacy of the position of Employes in this and other cases involving the same issue is revealed by their assertion that claimant should have been called to "make delivery" of the train order, when the rule plainly grants him the right only to "receive" it (except in cases of emergency). It is fundamental that Management's rights are restricted only to the extent that they are limited or surrendered in the governing schedule agreement.

They also contend in these cases that "the agreement does not permit leaving orders in bill boxes or at places to be picked up by trains", but such restriction or limitation is not found within the four corners thereof.

Employes further err in their assertion that the action of the Carrier was in violation of its operating rules, for the reason that said operating rules are promulgated by Carrier, and they may likewise be amended, modified, set aside or otherwise changed, without negotiation with Employes; and preface provides, "Special instructions may be issued by proper authority. When at variance with the rules, special instructions will govern." The operating rules are not in any manner a part of the agreement with Employes, and could not possibly be used as the basis for a claim of any kind under the terms of the schedule agreement.

In conclusion, Carrier wishes to bring to the attention of your Board that the matter of delivery of train orders was purposely omitted from the coverage of the rules of the schedule agreement and that it has been the practice on this property as far back as memory goes to effect delivery of them on occasions by various and sundry means other than by operator-clerk personally. Employes' acquiescence over this long period of years is an acknowledgment that the rules do not restrict the Carrier's action in this respect.

Carrier submits that this claim is wholly devoid of support from any standpoint, that it is in reality a request for a new rule granting petitioning Employes a right which they themselves did not obtain in negotiations, and should be denied.

All data submitted herein has been presented in substance to the duly authorized representatives of the Employes and is made a part of the particular question in dispute.

The Carrier is making this submission without having been furnished opy of Employes' petition and respectfully requests the privilege of filing a brief answering in detail the ex parte submission on any matters not already answered herein, and to answer any further or other matters advanced by the petitioner in relation to such issues.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue presented here was before the Division in TE-8618 (Award 10400) when a similar claim was decided.

The Carrier urges here that this prior award involving the same parties, similar facts and raising the identical issue is controlling here. The Organization recognizes the importance of precedent and that precedent should control in proper cases. They urge here that Award 10400 is "palpably wrong" and should be ignored. We have, therefore, examined carefully the briefs and citations furnished the Referee in Docket TE-8618 as well as the material contained in this docket and the briefs and citations of the parties.

Is the decision or the opinion of the Board, or both "palpably wrong"? That is, obviously wrong? A mere difference of opinion when there has been a long record of conflicting views on a particular question does not justify a conclusion on our part that a prior award was palpably wrong. After a careful study of many prior awards on this subject we have reached the conclusion that the decision was not palpably wrong but that the Opinion placed a restrictive interpretation on Rule 12—Handling Train Orders. This rule adds nothing to the scope rule, it merely removes any possible doubt that the handling of train orders belongs to the Telegraphers.

On a particular property if a question has been decided that decision should stand if there are reasonable grounds to support it. It would only create confusion to do otherwise. We believe that the reasoning expressed in the Opinion in Award 8327 will support a denial award here.

As in that Award (8327) there was no work performed by anyone not covered by the Telegraphers' Agreement in effecting delivery. Nor was any instrumentality employed in making delivery except the inert waybill box.

Train orders must be accurate and safely delivered to the addresses. The safe operation of the railroad requires this. The Carrier's operating rules require personal delivery, obviously a requirement to minimize the risk of non-delivery. But the Carrier has reserved the right to alter its rule by specific instructions. This it may do so long as the specific instruction does not violate the collective bargaining agreement. In this instance it has not required the delivery of the train order to be made by any employe not covered by the Telegraphers' Agreement.

We have, therefore, concluded that the Agreement was not violated as alleged.

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 20th day of November 1962.

DISSENT TO AWARD 10917, DOCKET TE-9564

In following Award 10400 the majority has repeated the errors of that award. My dissent to that award is equally applicable here, and should be so considered.

The majority further demonstrates its confusion by citing Award 8327 as supporting a denial award here. There is no rule in the confronting agreement like that which was the subject of Award 8327. Furthermore, Award 8327 is not in conformity with the principles firmly established by a long line of awards dealing with the same rule. It is clearly subject to the same criticism voiced by Referee Bakke in Award 1879. Compare, also, Awards 1166, 1169, 1170, 1422, 1680, 2928, 3611, 3612, 4057, 5013, 8657, 9319.

The majority correctly notes the basic reason for the operating rule requirement of personal delivery, but then nullifies the result by ignoring the fact that traditional operating practices are just as valid in arriving at a determination of intent as are the written words of the Agreement. See Award 4889, where we held that operating rules " . . . constitute competent evidence of the duties assigned positions named in the scope rule . . .".

For all of these reasons Award 10917 is in error and I hereby express dissent.

J. W. Whitehouse
Labor Member