

Award No. 10922

Docket No. TE-9966

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**MINNEAPOLIS, ST. PAUL AND
SAULT STE. MARIE RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Minneapolis, St. Paul and Sault Ste. Marie Railroad, that:

1. Carrier violated and continues to violate the Agreement between the parties when it requires or permits persons not covered by the Agreement to transmit reports and to handle train orders at Bemidji, Minnesota.

2. Carrier shall now compensate C. F. Hutchinson, Ticket Agent and Operator at Bemidji, or his successor, in the amount of a minimum call for each such violation commencing June 20, 1956 and continuing thereafter until the violation is corrected.

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

Bemidji, Minnesota is a station on the Minneapolis-Duluth Division of this Carrier. There are two positions under the Telegraphers' Agreement at this station. One is that of Agent who does not handle communications and is not involved in the instant case. The position of Ticket Agent and Operator located in the passenger station with assigned hours 8:00 A. M. to 5:00 P. M. (one hour meal period), assigned rest days of Saturdays and Sundays, position not represented on rest days.

The Great Northern Railway also operates through Bemidji and maintains a station about 300 feet south of this Carrier's station, employing operators on two shifts. Approximately one-half mile east of the respective depots the two railroads come together at a junction switch and operate eastward on a joint track. On this joint track the operations are controlled by the Great Northern train dispatchers.

The operation on the joint track went into effect shortly before the initial date of the instant claim and came about as a result of a coordina-

OPINION OF BOARD: Bemidji, Minnesota, is a station on the Minneapolis, Duluth Division of this Carrier (the Soo Line) being two positions there under the Telegrapher's Agreement, one of which is the Ticket Agent and Operator, the position we are concerned with here, a freight station and passenger station having been established at Bemidji by the Carrier. The Great Northern Railway Company also operates through Bemidji and maintains a passenger station about 300 feet south of the Carrier's station, employing operators on two shifts. (In the interest of convenience, the Great Northern Railway Company will be referred to as the Great Northern in the continuance of this Opinion).

For the purpose of effecting operating economies the Carrier and the Great Northern executed a co-ordination agreement under which the Soo Line would abandon certain trackage and would acquire an one-half interest and joint use of the Great Northern's line between certain points which became known as the Cass Lake Joint Section; the Great Northern was designated as Operating Company and it was stipulated between the Carrier and the Great Northern that the Operating Company would have charge, supervision and control over this joint section, the movement of the trains to be ordered and directed by the Operating Company. This Agreement between the two railroad Companies was approved by the Interstate Commerce Commission and the co-ordination was authorized which became effective June 19, 1956. Station facilities and station forces of the two Carriers at Bemidji were not included in the co-ordination.

Prior to the time Soo Line trains started operating over the joint trackage (Cass Line Joint Section) under Great Northern control, the eastward bound trains operated on the rails of the Carrier, and all train orders, clearances and messages for such trains were received, copied and delivered by Carrier's operators. After the co-ordination a new method of handling train orders was instituted. The Great Northern installed a telephone box on the outside wall of the Soo Line freight house about 300 feet west of the Carrier's telegraph office. The conductor, or some other member of the crew of the Soo Line eastward bound train 162 using this telephone reported to the Great Northern train dispatcher that the train was ready to proceed apparently giving the necessary information for the dispatcher's train sheet. The Great Northern train dispatcher issued necessary train orders and authorized a clearance to the Great Northern passenger depot about 300 feet south of the Soo Line tracks. Commencing June 20, 1956, the Great Northern operator was required to walk over either to the Soo Line freight or passenger depot and deliver the train orders to the conductor of eastward bound train 162.

No evidence has been offered by the Petitioner as to what the conversations were between the conductor of train 162 and the Great Northern dispatcher, it doesn't appear they were messages of record and, consequently, we will give them no further consideration in this opinion.

The Petitioner earnestly contends there has been a violation of the Scope Rule and the so-called "train-order" rule (identical to those contained in many agreements) and that the issue presented for our consideration is — "Which is the controlling factor? The identity of the train orders?, Or, the point of delivery?" Petitioner argues that the train orders are delivered to a Soo Line conductor while the train is standing on Soo Line tracks at a Soo Line depot at Bemidji, one-half mile from the point where the train goes onto the tracks of the joint section under control of the Great Northern, thus handling train orders on clearing trains under the Soo Line jurisdiction. The Petitioner urges the controlling factors are the character of the work performed and the location at which

performed. Petitioner also urges there is nothing unusual about an employe of the Carrier handling train orders of another, however, the instances Petitioner cites are where there have been joint facilities established. At Bemidji, there was no joint facility.

Carrier maintains these were Great Northern train orders, issued by a Great Northern dispatcher, received and copied by a Great Northern telegrapher and governed operation over tracks under the control of the Great Northern and that these facts are undisputed by the Petitioner; that the Petitioner disputes only the right of the Great Northern to complete the handling of the train orders by the delivery of the same to the conductor on Soo Line property.

In a number of awards it has been made quite clear that the delivery of orders to the train crew is a component part of the handling of train orders. There can be little question in the instant case but that these were Northern train orders. These being Great Northern train orders, a telegrapher in the employ of the Great Northern had a right to complete the handling of a train order by making the delivery of the same, as a component part of handling the train orders, to the conductor of Soo Line train 162. It is immaterial that the delivery was made at the Carrier's Station. The conductor could have walked over to the Great Northern Station, a distance of 300 feet, and received the train order.

After the co-ordination agreement the Carrier no longer had the work involved here available to which the position of the Claimant applied — the work belonged to the operator on the Great Northern. The "train order" rule is not a grant of work to employes covered by the Agreement but is a specific restriction and limitation upon the right of the Carrier to allow work covered by the Scope to be performed by those not covered. The handling of train orders in the instant matter, being the work of operators coming under their Agreement with the Great Northern, did not come within the purview of the Claimant's Agreement with the Carrier.

Some question was raised by the Carrier as to the identity of the Claimants; it was not raised on the property. Nothing would be gained by a discussion of it here.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 has not been 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.