

Award No. 11064

Docket No. TE-9566

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, 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 Agreement between the parties thereto when on May 22, 1956 it caused, required or permitted Track Car Driver Searfoss, an employe not covered by Telegraphers' Agreement, to handle (receive, copy and repeat) train order No. 52; clearance Form "C", and track car permit Form "TC" at Tannery, Pennsylvania.

(2) Carrier shall compensate senior idle telegraph service employe (extra in preference) on Wyoming Seniority District for one day (8 hours) on this date and on each day subsequent thereto when such violation occurred in the manner as set forth in paragraph (1).

(3) Carrier shall be required to permit joint check of records for the purpose of ascertaining dates of subsequent violations, if any, and to determine names of employes and amounts due them, if any, as a result of such subsequent violations, if any be found.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement between the Lehigh Valley Railroad Company, hereinafter referred to as Carrier or Management and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was effective on the 1st day of February, 1948. The Agreement is on file with this Division and is, by reference, made a part of this submission as though set out herein word for word.

The dispute submitted herein was handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. The dispute involves interpretation of the collective bargaining Agreement and is, under the provisions of the Railway Labor Act as amended, referable to this Division for award.

The instant claim involves work of handling Form 19 train order, clearance card Form C and track car permit by a track car driver at Tannery,

This rule is not difficult to interpret. As a matter of fact, the language is quite simple. It only reserves to the Organization the right to handle train orders at a point where an operator is employed. As pointed out in Carrier's Statement of Facts, there is no operator employed at the point involved in the instant claim. Therefore, it is obvious there was no violation of Rule 32, and that is the only rule in the current agreement relating to train orders for the claim in the instant case.

It is specifically clear in Rule 32 that at points where no operator is employed, 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 this claim 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 claim 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 is a dispute between The Order of Railroad Conductors and The Lehigh Valley Railroad Company.

This dispute arose out of the handling of a train order, a clearance card and a track permit by a track car driver at Tannery, Pennsylvania. Until 1952, round the clock telegraph and telephone service was maintained at Tannery. Since 1-31-52 no position under the Telegraphers Agreement has been maintained there.

On May 22, 1956, the three instruments above cited were handled as follows: Carrier's train dispatcher at Wilkes Barre, Pennsylvania called the telegrapher on duty at Penn Haven Junction and gave him the orders. The operator transmitted the orders to Section Foreman Searfoss at Tannery. The petitioner contends a violation because one, other than a telegrapher, handled the instruments (train order, etc.)

The Carrier contends that the Claimant is unnamed; that part 2 and 3 of the claim is beyond the jurisdiction of this Board; that this has been the practice for years and that Rule 32 authorizes such procedure.

The same issues have been presented to this Board in Awards 8146, 8540, 9999 and 10060. We concur with the opinions expressed therein.

For the foregoing reason, we find no violation of the Agreement.

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 24th day of January, 1963.