Award No. 11331
Docket No. TE-10138

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad that:

1. Carrier violated the agreement between the parties when it required or permitted employes not covered by the agreement to handle train orders at Vinegar Bend, Alabama, on February 27, 1957, and at Oak Grove, Alabama, on April 8, 1957.

2. Carrier shall now compensate the senior idle telegrapher, extra in preference, in the amount of a day's pay (8 hours) for each violation:

H. O. Jordan on February 27, 1957, and
W. L. Adams on April 8, 1957.

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

Vinegar Bend, Alabama and Oak Grove, Alabama are stations located on the Southern Division of this carrier, formerly the Mobile Division of the Mobile and Ohio Railroad. At the time cause for this claim arose there were no positions at either station under the Telegraphers' Agreement; each station, at one time, had a position of Agent-Telegrapher under the Agreement. The position at Oak Grove was abolished September 17, 1931 and the position at Vinegar Bend September 30, 1954.

At Vinegar Bend on February 27, 1957 Conductor Pierce in charge of work Extra 724 handled (received, copied and delivered) the following train order:

"Order No. 42

Feb 27 1957

C&E Work Extra 724 at Vinegar Bend

preceding awards, the copying of train orders by train crews, where no telegraphers are stationed, has been the custom and the practice on this Carrier's property for many years. This Board should not disturb this well-established practice."

The above referred to Awards involve the decisions of nine different Referees extending over a period of approximately nine years. In these cases, this Board has consistently held that claims similar to the present claims should be denied. In view of the above claims, and again emphasizing the claim where the present case has previously been decided, one might easily ask will there ever come a time when the question of copying train orders at non-telegrapher locations be put in a state of repose.

As pointed out in the previous case, the copying of a train order requires only a minute or two. Certainly there is no justification for paying an employe a day's pay for such a task. It is not known in advance when it will be necessary for a member of a train crew to copy a train order at a location where a telegrapher is not employed, therefore, to pay a telegraph operator a day's pay under such circumstances can only amount to a wind-fall to some idle employe for no work performed. Such payments would be an unnecessary waste of revenue and would contribute nothing whatsoever to the safety, efficiency or economy of railroad operations. No language in the Agreement between the parties to this dispute in any way intimates that such was the intent. Furthermore, such language would have to be explicit because it would necessarily require a complete change of a known and accepted practice prevailing since 1924.

In its submission in Award 8207, the Carrier has pointed out the complete failure of the Organization to submit any evidence to justify their claim, and, further, to meet the burden of proof necessary to sustain such a claim. The same argument is applicable here. It would only be a repetition to repeat the argument here.

The current Agreement between the parties, effective June 1, 1953, is a System Agreement and necessarily it must have uniform application. Uniformity was what the parties had in mind when they consolidated the prior agreements into the current agreement. It was in the light of prior accepted practice, which is common knowledge among all telegraph operators and the negotiators of the Agreements, that the parties brought forward identical language from two prior Agreements.

The Claim is without merit and should be denied.

Carrier reserves the right to make an answer to any further submission of the Petitioners.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue here is whether the Scope Rule of the effective Agreement of June 1, 1953, was violated when on dates of claim certain employes not covered by the Agreement copied train orders at the named locations where no telegraphers were employed.

Typically, the Scope Rule fails to describe the work or duties of the positions covered. Thus, in seeking to substantiate its claim that the work here performed by others belongs to the Telegrapher craft under the contract,

Petitioner relies on past practice in the industry generally and on the rules and practice formerly in effect on the particular division of the property where the alleged violations occurred when it was a part of the Mobile and Ohio Railroad.

It is true, as Petitioner shows, that historically the work of handling communications of record was reserved to telegraphers (Interpretation No. 4 to Supplement 13, General Order No. 27). It is also true that prior to acquisition by the Gulf, Mobile and Ohio Railroad Company, the Mobile and Ohio (M&O) and the Telegraphers entered into an agreement dated March 1, 1929, which contained the following:

> "(c) No employees, other than those covered by this agreement and train dispatchers, shall be required or permitted to do telegraphing or telephoning in connection with the movement of trains, except in bona fide emergency cases."

and that under that rule Telegraphers were paid when there was no emergency and others (except dispatchers) performed communications work.

The obvious difficulty with Petitioner's theory of the case is it has to concede that the effective and controlling Agreement under which this claim was progressed supersedes all agreements formerly in effect on the four railroads which, by merger, eventually became the Gulf, Mobile and Ohio. The Agreement in evidence contains no rule similar in effect or purpose to the old M&O rule. Petitioner concedes that Rule 15 of the Agreement (Train Orders) is not "directly applicable" (Employe's Submission), because it applies only at those locations where a telegrapher is employed or can be made available.

It is self-evident that a current agreement constitutes all of the things the parties intend to be bound by and that the provisions of prior agreements are rendered of no force and effect by exclusion therefrom. This rule of contract construction is well stated in Award 3813:

> "It is an established rule of contract law that where a later contract is entered into between the same parties in relation to and covering the same general subject matter as the earlier one, then the later contract supersedes the earlier one. The later contract is presumed to express the final agreement of the parties, and terms and conditions in the earlier agreement not included in the later one nor expressly reserved or continued by it are deemed superseded and abandoned. And this is so even though the later contract does not in express terms state that it supersedes the earlier one."

Nothing in the current agreement could be interpreted as preserving or perpetuating the old M&O rule.

Petitioner's showing of past practice on the former M&O property might be persuasive if the former M&O agreement was in evidence and the Board was required to interpret the meaning and intent of its provisions. There is no such separate agreement before us. The effective Agreement here is system-wide in its scope and its application covers all the constituent parts of the property. It supersedes and sets aside all those provisions of each of the four separate prior agreements which are not included therein or are in conflict therewith.

Petitioner has failed to show that throughout this property the work of copying train orders at places where no telegraphers were employed, belongs exclusively to employes covered by the current Agreement. Award 8207, involving these same parties and the identical issue, is controlling on this point.

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 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 26th day of April 1963.