

Award No. 11402

Docket No. TE-9986

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM:

CASE NO. 1.

Carrier violated the Agreement when on August 27, September 4, 6, and 7, 1956, it caused, required, or permitted an employe not covered by Telegraphers' Agreement to handle (receive by telephone, copy and deliver) track car permits (Form TC) at Audenried, Pennsylvania.

Carrier shall compensate the senior, idle telegraph service employe of the M&H District, extra in preference, on a day-to-day basis, for 8 hours at minimum telegrapher (telephoner) rate for such district for each and every day such violations have occurred as above set forth.

Carrier shall be required to permit joint check of its records to determine violations at Audenried, as above set forth, occurring subsequent to September 7, 1956, and when such violations have been determined, be required to compensate employes entitled thereto as may be revealed by joint check of employe work records.

CASE NO. 2.

Carrier violated the Agreement when on August 6, 7, 10, 13, 14, 15, 16, 17, 20, 22, and 23, 1956, it caused, required, or permitted an employe not covered by Telegraphers' Agreement to handle (receive by telephone, copy, and deliver) train orders Nos. 105, 102, 111, 104, 110, 114, 106, 105, 109, 106 and 108, respectively, at Pine Junction, Pennsylvania.

Carrier shall compensate the senior, idle telegraph service employe of the M&H District, extra in preference, on a day-to-day basis, for 8 hours at minimum telegrapher (telephoner) rate for such district for each and every day such violations have occurred as above set forth.

Carrier shall be required to permit joint check of its records to determine violations at Pine Junction as above set forth, occurring subsequent to August

23, 1956, and when such violations have been determined be required to compensate employes entitled thereto as may be revealed by joint check of employe work records. Rule 1, 2, and 10.

CASE NO. 3.

Carrier violated the Agreement when on August 7, 10, 13, 17, and 22, 1956, it caused, required, or permitted employes not covered by Telegraphers' Agreement to handle (receive by telephone, copy, and deliver) track car permits (Form TC) at Centralia, Pennsylvania.

Carrier shall compensate the senior idle telegraph service employe of the M&H District, extra in preference, on a day-to-day basis, for 8 hours at minimum telegrapher (telephoner) rate for such district for each and every day such violations have occurred as above set forth.

Carrier shall be required to permit joint check of its records to determine violations at Centralia, as above set forth, occurring subsequent to August 22, 1956, and when such violations have been determined be required to compensate employes entitled thereto as may be revealed by joint check of employe work records.

CASE NO. 4.

Carrier violated the Agreement when on August 6, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, and 23, 1956, it caused, required, or permitted an employe not covered by Telegraphers' Agreement to handle (receive by telephone, copy and deliver) train orders Nos. 106, 105, 107, 105, 103, 105, 107, 105, 110, 104, 107, and 102, respectively at McAdoo, Pennsylvania.

Carrier shall compensate the senior, idle telegraph service employe of the M&H District, extra in preference, on a day-to-day basis for 8 hours at minimum telegrapher (telephoner) rate for such district for each and every day such violations have occurred as above set forth.

Carrier shall be required to permit joint check of its records to determine violations at McAdoo, as above set forth, occurring subsequent to August 23, 1956, and when such violations have been determined to be required to compensate employes entitled thereto as may be revealed by joint check of employe work records.

CASE NO. 5.

Carrier violated the Agreement when on August 7, 9, 13, and 14, 1956, it caused, required or permitted an employe not covered by Telegraphers' Agreement to handle (receive by telephone, copy and deliver) track car permits (Form TC) at Kohinoor Junction, Pennsylvania.

Carrier shall compensate the senior, idle telegraph service employe of the M&H District, extra in preference, on a day-to-day basis, for 8 hours at minimum telegrapher (telephoner) rate for such district for such violations have occurred as above set forth.

Carrier shall be required to permit joint check of its records to determine violations at Kohinoor Junction, as above set forth, occurring subsequent to August 14, 1956, and when such violations have been determined be required to compensate employes entitled thereto as may be revealed by joint check of employe work records.

CASE NO. 6.

Carrier violated the Agreement when on August 21, 22, and 28, 1956, it caused, required, or permitted an employe not covered by Telegraphers' Agreement to handle (receive by telephone, copy, and deliver) track car permits (Form TC) at Locust Junction, Pennsylvania.

Carrier shall compensate the senior, idle telegraph service employe of the M&H District, extra in preference, on a day-to-day basis, for 8 hours at minimum telegrapher (telephoner) rate for such district for each and every day such violations have occurred as above set forth.

Carrier shall be required to permit joint check of its records to determine violations at Locust Junction, as above set forth, occurring subsequent to August 28, 1956, and when such violations have been determined, be required to compensate employes entitled thereto as may be revealed by joint check of employe work records.

CASE NO. 7.

Carrier violated the Agreement when on August 21 and September 4, 1956, it caused, required, or permitted an employe not covered by the Telegraphers' Agreement to handle (receive by telephone, copy, and deliver) train orders Nos. 122 and 120, respectively at Black Creek Junction, Pennsylvania.

Carrier shall compensate the senior, idle telegraph service employe of the M&H District, extra in preference, on a day-to-day basis, for 8 hours at minimum telegrapher (telephoner) rate for such district for each and every day such violations have occurred as above set forth.

Carrier shall be required to permit joint check of its records to determine violations at Black Creek Junction, as above set forth, occurring subsequent to September 4, 1956, and when such violations have been determined be required to compensate employes entitled thereto as may be revealed by joint check of employe work records.

CASE NO. 8.

Carrier violated the Agreement when on August 21, 22, 23, 24, 28, 31, and September 5, 1956, it caused, required, or permitted an employe of another railroad who is not covered by Telegraphers' Agreement to handle (receive by telephone, copy, and deliver) train orders Nos. 135, 120, 116, 118, 120, 129, and 124, respectively at Locust Junction, Pennsylvania.

Carrier shall compensate the senior, idle telegraph service employe of the M&H District, extra in preference, on a day-to-day basis for 8 hours at minimum telegrapher (telephoner) rate for such district for each and every day such violations have occurred as above set forth.

Carrier shall be required to permit joint check of its records to determine violations at Locust Junction as above set forth occurring subsequent to September 5, 1956, and when such violations have been determined, be required to compensate employes entitled thereto as may be revealed by joint check of employe work records.

CASE NO. 9.

Carrier violated the Agreement when on August 20, 21, 23, 24, September 4, 5, 6, and 7, 1956, it caused, required or permitted employees not covered by Telegraphers' Agreement to handle (receive by telephone, copy, and deliver) track car permits (Form TC) at Ashmore, Pennsylvania.

Carrier shall compensate the senior, idle telegrapher service employee of the M&H District, extra in preference, on a day-to-day basis for 8 hours at minimum telegrapher (telephoner) rate for such district for each and every day such violations have occurred as above set forth.

Carrier shall be required to permit joint check of its records to determine violations at Ashmore as above set forth, occurring subsequent to September 7, 1956, and when such violations have been determined be required to compensate employees entitled thereto as may be revealed by joint check of employee work records.

CASE NO. 10.

Carrier violated the Agreement when on August 20, 24, 29, and 31, 1956, it caused, required or permitted an employee not covered by Telegraphers' Agreement to handle (receive by telephone, copy, and deliver) track car permits (Form TC) at Black Creek Junction, Pennsylvania.

Carrier shall compensate the senior, idle telegraph service employee of the M&H District, extra in preference, on a day-to-day basis for 8 hours at minimum telegrapher (telephoner) rate for such district for each and every day such violations have occurred as above set forth.

Carrier shall be required to permit joint check of its records to determine violations at Black Creek Junction, as above set forth, occurring subsequent to August 31, 1956, and when such violations have been determined be required to compensate employees entitled thereto as may be revealed by joint check of employee work records.

CASE NO. 11.

Carrier violated the Agreement when on March 13, 1957, it required or permitted an employee not covered by Telegraphers' Agreement to handle (receive, copy, and deliver) train order No. 27 at Stafford, New York.

Carrier shall compensate the senior, idle telegraph service employee of the Buffalo District, extra in preference, for eight hours at minimum telegrapher (telephoner) rate for such district for March 13, 1957, the day on which the above violation occurred.

Carrier shall be required to permit joint check of its records for the purpose of ascertaining the name of employee entitled to receive such compensation as above set forth.

CASE NO. 12.

Carrier violated the Agreement when on April 11, 1957, it required or permitted an employee not covered by Telegraphers' Agreement to handle (receive, copy and deliver) train order No. 40 at Caywood, New York.

Carrier shall compensate the senior, idle telegraph service employe, Mr. A. W. Hileman, for 8 hours at minimum telegrapher (telephoner) rate for such district for April 11, 1957, the day on which the above violation occurred.

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 first 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 disputes submitted herein were handled on the property as twelve separate disputes. We shall refer to the several disputes by Case No. running from No. 1 to 12. The disputes were handled in the usual manner on the property and through the highest officer designated by Carrier to handle such disputes, and failed of adjustment. The disputes involve interpretation of the collective bargaining Agreement, and are, under the provision of the Railway Labor Act, as amended, properly referable to this Board for award.

CASE NO. 1. (Audenried)

This dispute involves the handling of track car permits by Section Foreman Gurish at Audenried, Pennsylvania. The track car permit handled on the first day of claim was as follows:

"LEHIGH VALLEY RAILROAD COMPANY T.C.

SUPERINTENDENT'S OFFICE Hazelton, August 27, 1956

Driver Track Car 7324 At Audenried 2:18 P.M. via Operator "HS"

You may proceed Audenried to Shimer on No. 1 track and must be clear and report clear at 2:30 P.M.

Train Information

Gurish

(Section Foreman)

L.P.Z.

Superintendent"

Track car permits handled on other dates known at the time the claims were filed are shown as O.R.T. Exhibits 1, 2 and 3.

Formerly, a position classified as Agent-Telegrapher was maintained at Audenried. The Employes do not have information as to the exact date of abolishment of position.

On October 6, 1956, Mr. D. J. North, who is Local and General Chairman, filed claim with Supervising Agent Becker as follows:

"On behalf of Telegraphers' Committee, I present the following claim:

1. Carrier violated the Agreement when on August 27, September 4, 6 and 7, 1956, it caused, required or permitted an employe not covered by Telegraphers' Agreement to handle (receive by telephone, copy and deliver) track car permits (Form TC) at Audenried, Pennsylvania.
2. Carrier shall compensate the senior idle telegraph service employe of the M&H District, extra in preference, on a day-to-day basis,

"The only claims properly before this Board for its consideration are those for named parties for specified dates and locations."

The Carrier cannot be forced to search its records to develop claims against itself. First Division Awards Nos. 7206, 11642, 13296, 15300, 15389 and 16116. Therefore, it is the contention of the Carrier in the instant claims that there are no alleged violations on the dates specified properly before this Division and, therefore, such claims cannot be considered.

The issue in dispute in this docket has already been considered by this Division in an identical case on this carrier between the same parties here involved. This Division, with Referee Elkouri, decided there was no violation of the agreement involved when non-scope employes received their own orders by telephone for track car movements at points where operators are not employed. See Award No. 8146, Docket TE-7703 decided November 19, 1957.

Carrier submits that there is no violation of the current agreement on this property when a track car operator or conductor copies an occasional train order or track car permit at a point where an operator is not employed. The Telegraphers have recognized this and have acquiesced thereto for a long number of years. Their unsuccessful attempt to negotiate a rule prohibiting the practice is a complete admission that the rules now in existence and effect do not prohibit—hence, this Division having no authority to sustain claims by writing new rules for the parties, all 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.

(Exhibits not reproduced.)

OPINION OF BOARD: This submission presents 12 disputed claims. In each of these disputes it is contended that the Carrier violated the Telegraphers' Agreement because a train order or a track car permit (a message 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 then employed. The Carrier denies any violation of the Agreement.

The issue thus raised, though arising at different points, deals with the same rules on the same property and has been before this Division a number of times. See Awards 8146, 8540, 9999, 10060, 10061, 10863, 10913, 10915, 10916, 11064.

When the Division has previously considered and disposed of a dispute involving the same parties, the same rules and practically identical facts presenting the same issue as now before it, the prior decisions control, any other standard would lead to confusion and no satisfactory purpose would be served in any of the appeals to this Board.

The prior Awards have determined these issues adversely to the Claimant. (See Awards heretofore listed.) In the absence of any showing that these Awards were palpably erroneous we must follow them.

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 has not been violated.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of May 1963.