

Award No. 11480
Docket No. TE-10445

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware and Hudson Railroad, that:

1. Carrier violated the rules of the Agreement when it caused, required or permitted Conductor Seguin, Engine 4029 at Plattsburg, to handle 19 Order No. 210 on March 11, 1957.

2. Carrier shall now compensate H. W. Ladue, one call in the amount of \$2.062 per hour or \$6.19, account not called to handle Train Order No. 210.

EMPLOYES' STATEMENT OF FACTS:

1. There was, on the date of this claim, in full force and effect a collective bargaining agreement effective July 1, 1944, entered into by and between the Delaware and Hudson Railroad Corporation, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement is, by reference, made a part of this submission as though set out herein word for word.

2. This 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. Under the provisions of the Railway Labor Act, as amended, the dispute arising out of interpretation of the collective bargaining agreement, is properly submitted to this Board for award.

3. Claimant, an extra telegrapher, on March 11, 1957, worked first shift telegrapher position at Plattsburg in the place of the regular incumbent B. M. Quinn. The assigned hours of service are 6:00 A. M. to 2:00 P. M. The pro rata rate of pay is \$2.062 per hour.

4. This claim involves the handling of Train Order No. 210 which was in words and figures as follows:

The carrier would also call attention to Award 6487, Referee Rader, where the rules involved and the practices thereunder closely parallel the case at issue. The following is quoted from the Opinion in Award 6487:

"It may well be argued that if such copying of train orders is per se a violation of the Agreement, then the intervening of the long period of time does not condone the practice. However, by such period of time it appears that this has become a standard practice, acquiesced in by employes and that the parties have placed their own interpretation on the same. And such being so, it is not the province of this Division of the Board to interpret the rules for them."

In Award 7153, Referee Larkin, the claim was dismissed based on long-established practice under existing rules. The following is quoted from the Opinion in Award 7153:

"Both parties were fully cognizant of the provisions of Rule 217, and the practice under it, at the time of the adoption of their Agreement in 1939. Had there been any serious intention to change this, more definite language to that end should have been added in the Scope Rule or at some other point in the Agreement. Failure to do this in 1939, and failure to do it in the 1946 negotiations leads us to the conclusion that the parties have not agreed to change the long-established practice. It is a matter for further negotiation. It is not for us to read into the language of the Scope Rule something which the parties themselves have quite obviously omitted."

The train order in this case was issued by a Train Dispatcher and copied by the telegrapher on duty at Chazy before that telegrapher transmitted it to the crew at Plattsburg. Under such circumstances, the claim is not supported by agreement rules. In any event the copying of train orders at points where telegraphers are not on duty by other than telegraphers is not a violation of the Telegraphers Agreement and accepted practices thereunder.

It is the Carrier's position that the claim should be denied based upon the long-established practice, without claim or protest, of other than telegraphers copying train orders at points where telegraphers are not employed or on duty.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: There is no dispute as to the facts in the instant case. Claimant, H. W. Ladue, an extra Telegrapher, on March 11, 1957, worked the first shift telegrapher position at Plattsburg, New York, in the place of the regular incumbent, assigned hours 6:00 A. M. to 2:00 P. M.; at 2:27 P. M. a train order addressed to conductor and engineer of Train 4029 at Plattsburg was delivered by a conductor. Claimant was readily available to perform the service required in the handling of this train order.

Article 23 of the Agreement provides the manner in which train orders may be handled.

In Award 8260 (Guthrie) this Board has interpreted the same rule of the same Agreement and the identical violation is involved — that of receiving and

copying and delivering train orders by train service at a telegraph and telephone office. Award 8260 is a binding interpretation of the Agreement and rules and must be followed by us as a precedent.

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 been followed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June 1963.