Award No. 11661
Docket No. TE-10504

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE ANN ARBOR RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Ann Arbor Railroad, that:

1. The Carrier violated the parties' Agreement at Lake George, Michigan, when on March 13, 1957, it permitted or required a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) train orders.

2. The Carrier shall, because of the violation set forth above, compensate W. G. Freeman, the senior idle extra employe entitled to the work, a day's pay ($15.92).

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute affective September 1, 1955, as amended.

At Page 9 of an agreement between the United States Railroad Administration and the employes in the Telegraphers' class and craft as represented by The Order of Railroad Telegraphers on this property effective October 1, 1918, is, among other things listed:

		Hourly Rate
Lake George	Telegrapher.....	.48

At Page 3 of this same agreement prefacing the rules are the following forewords:

"Agreement with Telegraphers effective April 1, 1917, as to Rules and Rates of Pay, is hereby changed to comply with Supplement No. 13 to General Order No. 27 issued by the Director General of United States Railroad Administration effective October 1, 1918.

Addenda, supplements and interpretations thereto will be applicable to this schedule."

An Agreement by and between the Ann Arbor Railroad Company and its employes as represented by the Organization party to this dispute effec-

The negotiations subsequently held as a consequence of the March 23, 1942 notice resulted in disagreement as to the inclusion of the "Handling Train Orders" rule and ultimately resulted in the consumation of the Agreement between The Ann Arbor Railroad Company and its employes thereof represented by The Order of Railroad Telegraphers, effective May 16, 1942, which agreement did not contain the Rule 13 — Handling Train Orders, as proposed by the Committee, nor were the provisions contained in that proposed rule included in the scope rule or in any other rule found in that agreement.

Rule 1 — Scope, in the Agreement between The Ann Arbor Railroad Company and its employes represented by The Order of Railroad Telegraphers, effective May 16, 1942, copies of which are on file with this Division, reads as follows:

"RULE 1

SCOPE

The following rules will govern the employment and rates of pay of all agents, agent-telegraphers, agent-telegrapher-levermen, telegraphers, telegrapher-levermen, whose positions are shown in Rule 30 hereof, who shall hereafter be considered as employes covered by this agreement."

and Rule 1 — Scope, as contained in the Telegraphers' Agreement effective September 1, 1955 is the same as Rule 1 contained in the Telegraphers' Agreement effective May 16, 1942.

The claims should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The first issue is one of jurisdiction. Carrier asserts that Organization has not compiled with Rule 29 I(c) of the Agreement between the parties; and further since the issue involved herein was not negotiated under Section 6 of the Railway Labor Act, the Board has no authority to hear the complaint.

The Board finds that Section 6 is not applicable in this case, as contended, for the issue involves interpretation of the existing agreements of the parties rather than formulation or revision of the rules.

As to the contention concerning Rule 29 I(c), the controlling factor revolves around the issue of the completion of the procedural aspects before filing notice of intent and submission to the Board. Carrier argues that since Claimant failed to institute proceedings on May 27, 1958, the last date under said rule, the claim is barred. Claimant maintains, on the other hand, that having filed with the Board within nine months subsequent to a conference, a method within the meaning of "usual manner" of handling disputes of this nature under the Railway Labor Act, the procedure was in conformity with Rule 29 I(c). There are decisions up-holding both contentions and cited by both parties.

The Board finds that the conference was an integral part of the procedure in handling the dispute in the "usual manner". Since Claimant instituted proceedings before the Board within the nine month period prescribed, the Board has jurisdiction in this case.

The dispute involves an interpretation of the Scope Rule as applied to the following facts: On March 13, 1957 an engine became disabled on the main track approximately four miles east of the station at Lake George. Although this station had telegraphers in the past, no such agent had been assigned for at least 25 years. A relief engine arrived about five hours after the failure occurred. An extra telegrapher was assigned at one of the stations close to Lake George to handle train orders growing out of this incident. At the Lake George station, however, the conductor received train orders via telephone. Telegrapher W. G. Freeman, Senior Extra Employe, was approximately 194 miles from Lake George station at this time.

Organization claims that the use of a conductor to receive or transmit train orders was a violation of the rights reserved to telegraphers under the operation of the Scope Rule. It maintains that whether or not a train order is communicated by telephone or by telegraph, it comes under the craft of telegrapher.

Carrier, however, asserts that the Scope Rule does not specifically define or describe the work of a telegrapher, but rather lists general classes of employes covered by this Agreement and that any work under this rule is determined by tradition, historical practice, and custom. Carrier, hence, contends that the Scope Rule was not violated when the conductor received the train orders at Lake George.

Both parties agree that there is no standard train order rule in their agreement. Moreover, citations are hopelessly in conflict and fail to establish any clear-cut principles for guidance.

The Board is of the opinion that since the Scope Rule cannot in itself be interpreted as setting forth a hard, fast, and specific definition, the particular circumstances and facts are decisive and controlling in this dispute. Although the Board recognizes that the telegrapher generally gives and receives train orders by telephone and telegraph, it nevertheless cannot ignore the fact that the Scope Rule does not exclude other than telegraphers from receiving train orders. A scrutiny of the record reveals that the telegrapher operation at Lake George was closed for at least 25 years and obviously was not intended or expected to be used. An extra telegrapher was on duty at Marion, the closest station at Lake George. At the expense of an additional delay of 30 minutes this telegrapher could have handled the train orders. The use of the conductor to handle the train orders was to expedite matters rather than to avoid the use of a telegrapher. Since Carrier had a telegrapher at Marion already on duty and available, it is understandable why it was not necessary to call W. G. Freeman, Senior Extra Employe, who was 194 miles away.

Under these set of circumstances, the Board holds that Carrier did not infringe on the rights of the telegrapher and, hence, did not violate the Agreement of the parties.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of July, 1963.

SPECIAL CONCURRING OPINION TO AWARD NO. 11661, DOCKET NO. TE-10504

Award 11661 is correct in denying the claim and holding—

That "the Scope Rule cannot in itself be interpreted as setting forth a hard, fast, and specific definition" and it "does not exclude other than telegraphers from receiving train orders";

That "it was not necessary to call W. G. Freeman, Senior Extra Employe, who was 194 miles away";

That "The use of the conductor to handle the train orders was to expedite matters rather than to avoid the use of a telegrapher", and

That "Carrier did not infringe on the rights of the telegrapher and, hence, did not violate the Agreement of the parties."

However, Award 11661 is in error in holding that "Claimant instituted proceedings before the Board within the nine month period prescribed" in Rule 29, because Carrier's highest designated officer denied the claim on August 27, 1957, while Petitioner's notice of intention to file the dispute with this Division was dated June 25, 1958. The agreement is specific in providing that proceedings must be instituted within nine months from the "date of said officer's decision". Furthermore, our Awards consistently hold that there must be agreement to extend time limits and that the holding of a conference and reaffirmation of a prior denial does not extend time limits.

/s/ W. H. Castle

/s/ D. S. Dugan

/s/ P. C. Carter

/s/ T. F. Strunck

/s/ G. C. White

REPLY TO "SPECIAL CONCURRING OPINION" TO AWARD 11661, DOCKET TE-10504

Characteristically, the signatory members of the majority disagree with the only portion of this Award which represents a logical evaluation of the facts, rules, and provisions of the Railway Labor Act. Obviously, no one who has a proper regard for the purposes sought to be achieved by the Railway Labor Act can quarrel with a finding that where a conference is a necessary part of the usual handling of disputes, as it is with these parties — evidenced by Awards 10939 and 11434 — such handling is not completed until the required conference is held.

With equally unerring aptitude for embracing the erroneous, they point up the fallacies of the Award by repeating its errors. Apparently they think that if error is repeated often enough, with their blessings, it will become truth. I have no such faith in, nor fear of, their efficacy in this respect. The reasoning by which the rights of the Employes were denied remains as fallacious as it was before the "Special Concurring Opinion" was written.

J. W. WHITEHOUSE
Labor Member