

Award No. 11807
Docket No. TE-10687

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Kieran P. O'Gallagher, 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 Article 1, Article 14 and Article 23 of the current Agreement when, on June 27, 1957, it required Telegrapher Deso at Plattsburg, New York to leave train order No. 211 on the train register in the yard office at Plattsburg, New York to be delivered to conductor and engineman of Engine 4120 by others than employes covered by the Telegraphers' Agreement, which work is by agreement solely and exclusively reserved to employes covered by the Agreement.

2. Carrier shall compensate Telegrapher Deso in accordance with Article 14 (a) or a minimum of three hours at regular rate or \$6.28.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement 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 Employes or Telegraphers. The Agreement was effective April 1, 1957 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. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the parties and the subject matter.

1. On the 27th day of June 1957, the regular assigned telegrapher on duty at Plattsburg (R. E. Deso), at 9:34 P.M., received and copied from the train dispatcher, train order No. 211, which was in words and figures as follows:

that the Agent-Telegrapher was not present to hand the train order to the Conductor."

"This case can be easily distinguished from those where Carriers have resorted to artifice, sharp practice and subterfuge to escape the force, of rules or established practice. The record before us is clear that delivery was made at a customary place and in an authorized manner. The Agent-Telegrapher was divested of dominion over and possession of the thing to be delivered, and surrender was complete when, as instructed by proper authority, he placed the train order on the register to be picked up by the Conductor. Thereupon, he was relieved of any further responsibility for custody or safe keeping of the train order and as to him delivery was complete."

The train order in question was handled in accordance with an established practice that has existed without protest or claim until December, 1954. The train order was transmitted by the Train Dispatcher, received by the Telegrapher-Clerk, and picked up and executed by the crew of the train addressed, without assistance from other sources.

Claim is not supported by agreement rules and established practices thereunder and carrier respectfully requests that it be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: The question presented by the instant claim has been determined on the same property in Awards 8657, 9319 and 10239, in which the facts are similar to those found here. It therefore follows that on the authority of the awards above cited, the claim will be sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of October, 1963.