

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE AND HUDSON RAILROAD CORP.

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

1. Carrier violated the Telegraphers' Agreement when on June 6, 1957, it caused, required, or permitted Trainman McFadden, Extra 4125 North to handle (receive, copy and deliver) 19 Train Order No. 209 at "CY" Siding.

2. Carrier shall now compensate Ralph H. LaMarche, the senior, idle, extra telegrapher, eight hours at \$2.014 per hour, the minimum rate on the extra board territory. Total amount claimed \$16.11.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between The Delaware & 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, is on file with this Division, and by reference is made a part of this submission as though set out herein word for word.

The dispute submitted herein was handled on the property through the highest officer designated by Carrier to handle such disputes and failed of adjustment. The dispute is submitted to this Division under the provisions of the Railway Labor Act, as amended, and the Board has jurisdiction of the parties and the subject matter in accordance with the provisions of said Act.

This dispute involves violation of the Agreement in permitting an employe not covered by Telegraphers' Agreement to handle train order at "CY" Siding on the 6th day of June, 1957. Article 23(A) provides:

"No employe other than covered by this Agreement and Train Dispatchers will be permitted to handle train orders, except in cases of emergency."

(b), supra, must be regarded as qualifying the force and effect to be given the provisions of subsection (a), supra, which precedes it. So regarded, we believe that inherent in such subsection, and certainly if not inherent, clearly implied therein, is the proposition that—so far as the particular agreement now in force and effect on the involved property is concerned—if train orders are handled at stations where no member of the craft is employed, they may be handled by other employees."

Award 6863 was discussed by the negotiators prior to arriving at agreement on Article No. 23 of the April 1, 1957 Agreement, and it was clearly understood that the interpretation placed on the B&M train order rule in Award 6863, insofar as handling train orders where telegraphers were not employed, would be the accepted application of the same rule in the D&H Agreement effective April 1, 1957.

In addition, it is desired to call particular attention to the train order rule proposed by the employees on February 3, 1955, particularly paragraph (c). It will be noted that this proposed rule, if it had been accepted, would apply to handling train orders at points where telegraphers were not employed. No such rule was agreed to. The train order rule which was agreed to was already interpreted in Award 6863 as not applying where telegraphers were not employed, and such interpretation was clearly understood by the negotiators of the present train order rule.

Insofar as handling train orders where telegraphers are not employed, it has always been the practice for other than telegraphers to handle such train orders, without claim or protest from telegraphers until late in 1954. Attached are several statements, marked Exhibits A to J, attesting to this practice of handling train orders. Several claims of telegraphers presented since 1954 are now pending before the Third Division under the previous agreement. Two such claims have been decided by the Third Division in Awards 8037 and 8038, and the contentions of the employees rejected.

Regardless of previous disputes as to the exclusive right of telegraphers to handle train orders at points where telegraphers were not employed, the train order rule effective April 1, 1957, was agreed to with both parties having full knowledge of the interpretation placed upon this exact rule by this Division of the Board in Award 6863 and such interpretation of this rule was accepted by both parties.

Without agreeing that there is any basis for sustaining the claim in this case, if for any reason the Board finds that it should be sustained, it should be for no more than a call under the provisions of Article No. 14 A.

Claim is not supported by agreement rules 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 part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The issues herein are the same as in Docket No. 10541, Award No. 12015, and we adopt the opinion therein as determinative of the issues in the confronting claim.

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 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 19th day of December 1963.