

Award No. 12129
Docket No. TE-9837

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Arthur W. Sempliner, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
LEHIGH VALLEY RAILROAD COMPANY

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

1. Carrier violated agreement between the parties hereto when on the 4th, 7th, 11th and 21st days of December, 1956, it caused, required or permitted employes not covered by Telegraphers' Agreement to handle (receive by telephone, copy and deliver) track car permits (Form T/C) at Rummerfield, Pa.

2. Carrier violated the Agreement between the parties hereto when on the 7th and 24th days of December, 1956, it caused, required or permitted employes not covered by Telegraphers' Agreement to handle (receive by telephone, copy and deliver) track car permits Form T/C) at Vosburg, Pa.

3. Carrier shall compensate the senior, idle telegraph service employes on the Seneca Seniority 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 occurred as above set forth.

4. Carrier shall be required to permit joint check of its records to determine violations at Rummerfield and Vosburg, subsequent to the dates set forth above and when such violations have been determined, if any be found, be required to compensate employes in the same amount as above set forth for each and every day and date such violations, if any, have occurred. Payment to be made to senior, idle telegrapher, extra in preference, for each date of violation, if any be found.

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.

work; they do not undertake to specify directly the inclusion of all of such classes of work; the seniority rules merely control the disposition of the work that is available under the agreement."

(Emphasis ours.)

In the present claims and the many other claims of like character in dispute between the parties here and which are at present before your Board awaiting decision, the Organization has been peculiarly quiet on Rule 32 of the current agreement, the caption of which is "HANDLING TRAIN ORDERS." For ready reference, the rule reads as follows:

"No employe other than covered by this agreement and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case, the telegrapher will be paid for the call." (Emphasis ours.)

This rule is not difficult to interpret. As a matter of fact, the language is quite simple. It only reserves to the Organization the right to handle train orders at a point where an operator is employed. As pointed out in Carrier's Statement of Facts, there is no operator employed at the point involved in the instant claims. Therefore, it is obvious there was no violation of Rule 32, and that is the only rule in the current agreement relating to train orders for the claims in the instant case.

It is specifically clear in Rule 32 that at points where no operator is employed, handling orders at such points is not exclusively reserved to the Telegraphers. In view of said rule, Carrier asserts that the Organization cannot establish the burden of proof necessary in these claims and, as so often held by this Division, that burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks such allowance.

See Awards Nos. 4011, 5135, 5329, 5345 and others.

The 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.

OPINION OF BOARD: The Claimants allege violation of the Agreement, when the Carrier allowed drivers of motor cars to receive by telephone and copy track car permits, at points where there had been positions under the Telegraphers' Agreement. The instances complained of cannot be considered an emergency, and occur regularly in the Carrier's service.

The decision must rest squarely on the contract involved. Rule No. 32 of the contract reads as follows:

"RULE 32

Handling Train Orders

No employe other than covered by this agreement and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case, the telegrapher will be paid for the call."

The Organization cites at length awards interpreting other contracts, and decisions, of the administrator under government operation. However, on this property, the quoted rule above, Rule No. 32, does not restrict handling where an operator is not employed. The issue has been raised and denied in Awards 10913, 10863, 10061, 10060, 9999, 8540, 8146, and many others. The awards are sound and must be followed here. The Organization does not deny such procedure has been past practice on the property.

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 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 24th day of January 1964.