

Award No. 12150
Docket No. TE-9988

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN RAILWAY COMPANY**

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

1. Carrier violated the agreement between the parties when on August 21, 1956, at 7:35 A.M., it allowed or permitted Conductor Sprouse, an employe not covered by the agreement, on Train Extra 8212 South, to receive and copy Train Order No. 11, addressed to train at Burke, Virginia, direct from the Dispatcher.

2. Carrier violated the terms of the agreement when on September 5, 1956, at 6:41 A.M., it required or permitted Conductor W. W. Pleasants, an employe not covered by the agreement, on Work Extra 2163, to receive and copy train order No. 14 at Springfield, Virginia, direct from the Train Dispatcher.

EMPLOYEES' STATEMENT OF FACTS: On Tuesday, August 21, 1956, Conductor Sprouse, on Extra 8212 South, used a telephone at Burke, Virginia, to contact the dispatcher. The dispatcher sent the following train order No. 11 to Extra 8212 at Burke:

FORM
19

SOUTHERN RAILWAY SYSTEM

FORM
19

Train Order 11 Date Aug 21 1956
TO C&E ALL NORTH AT Manassas, Va.

WORK EXTRA 8212 SOUTH HAS RIGHT OVER OPPOSING
TRAINS ON NORTH BOUND TRACK BURKE TO FAIRFAX
CROSSOVER. THIS ORDER VOID AT 815 eight fifteen AM

JWS Chief Dispatcher

MADE Complete

TIME 738 AM

Hyde OPR

Conductor and Engineman must each have a copy of this Order.

In Third Division Award 6828, Referee Messmore, it was held:

"The authority of this Division is limited to interpreting and applying the rules agreed upon by the parties. If inequities among employes arise by reason thereof, this Division is without authority to correct them, as it has not been given equity powers. In other words, we cannot make a rule or modify existing rules to prevent inequities thus created. Renegotiation thereof is the manner provided by the Railway Labor Act, which is the proper source of authority for that purpose. See Award 5703. See, also, Awards 4439, 5864, 2491.

'The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance.' See Awards 3523, 6018, 5040, 5976."

The Board, having heretofore recognized the limitations placed upon it by law, and the fact that it is without authority to grant new rules or modify existing rules, such as here demanded by the ORT, and will, therefore, not attempt to further restrict Carrier's rights, has ample justification for making a denial award for this one reason, if for no other, and there are others.

CONCLUSION

Carrier has proven that:

(a) Claims which the ORT here attempts to assert are not the same as those presented and handled in the usual manner on the property, as required by the Railway Labor Act, the effective agreement and Board Rules of Procedure. They are, therefore, barred, and the Board has no jurisdiction over them and should dismiss them for want of jurisdiction.

(b) Without prejudice to its position that the claims are barred and the Board is without jurisdiction and should dismiss them for want of jurisdiction, Carrier submits that the effective Telegraphers' agreement has not been violated, as alleged, that no monopolistic rights to the handling, copying or receiving of train orders have been conferred upon employes of the telegraphers' class or craft as here alleged by the ORT, that Rule 31 of the agreement in evidence defines the extent to which employes of the telegraphers' class or craft may handle train orders, that the point here at issue has heretofore been conceded by the ORT, and that prosecution of the claims constitutes nothing more than a demand for new rules or working conditions by an award of the Board, rules and working conditions which, if agreed to, would require the Carrier to revert to the horse and buggy days of railroading, establish a featherbedding or make-work scheme, pay persons when no work is performed—in fact, impossible to perform; rules and conditions of employment which the Adjustment Board has no authority to grant.

(c) While the claims are barred and the Board has no jurisdiction over them and should dismiss them for want of jurisdiction, if, despite these facts, the Board assumes jurisdiction, it cannot do other than make a denial award.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts giving rise to this claim occurred at telephone booths which the Carrier had set up along the right of way. No telegrapher or other employe of the Carrier was stationed at these booths.

It is the contention of the Organization there has been a violation of the Agreement of the parties, dated September 1, 1949, in permitting an employe not covered by the Agreement to copy a train order, the Organization claiming that the Scope Rule confers exclusivity upon those covered by the Agreement in the performance of that work.

The record reveals that the custom and practice of having train orders copied by other than telegraphers at telephone booths where telegraphers were not stationed was in vogue for a great many years prior to the effective date of the Telegraphers' Agreement, and continued to the date of this claim. In fact, the letter of October 19, 1929, which is referred to by a note appended to Rule 31, the Train Order Rule, incorporated in the current Agreement confirms this.

Therefore, the Scope Rule, being general in character, and conferring no exclusivity upon the Claimants herein to the work, the subject of the claim, we find no violation of the Agreement, and the claim must be denied.

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 29th day of January 1964.