

Award No. 12183
Docket No. TE-10881

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NEW YORK CENTRAL RAILROAD — SOUTHERN DISTRICT

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Cleveland, Cincinnati, Chicago and St. Louis Railway, that:

Claim No. 1

1. The Carrier violated the parties' Agreement at Duff, Indiana, when on Saturday, January 4, 1958, it required or permitted Conductor Burton on Extra 5979 North, an employe not covered by the Agreement, to handle (receive, copy and deliver) train order No. 230 over the telephone.

2. The Carrier shall, because of the violation set forth above, compensate Senior Idle Extra Telegrapher R. L. Abrell, entitled to the work under applicable rules, a day's pay (\$17.50).

Claim No. 2

1. The Carrier violated the parties' Agreement at Duff, Indiana when on Monday, March 3, 1958, it required or permitted Conductor Risley on Work Extra 376, an employe not covered by the Agreement, to handle (receive, copy and deliver), train orders over the telephone.

2. The Carrier shall, because of the violation set forth above, compensate Senior Idle Extra Telegrapher R. L. Abrell, entitled to the work under applicable rules, a day's pay (\$17.50).

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective December 16, 1950, as amended.

At Page 50 of said Agreement are listed the positions existing at Duff, Indiana, on the effective date of the current Agreement. The listing is:

because employees feel that additional duties are in fact of sufficient proportion to entitle them to that higher pay they are relegated to the procedures and provisions contained in Section 6 of the Railway Labor Act. See Awards 7083, 7093 and 7170."

CONCLUSION

From the above-quoted schedule rule, exhibits attached and Board Awards cited, Carrier has conclusively shown that—

- (1) Schedule rule cited by Organization, as now written, does not support claims;
- (2) Organization's persistent efforts to secure amendments to rule since its adoption is an admission that rule does not cover;
- (3) Carrier is legally obligated to operate in an efficient and economical manner and could not, from the standpoint of economy, maintain an open station for the copying of an occasional train order, which in this case, only happened twice in a period of approximately two years;
- (4) Claimant was not available for the service for which he is making claim and, in a sense, is asking pay account deprived of work he was not in a position to perform; and,
- (5) Organization, by progression of these claims, is attempting to secure a new rule, which the Third Division does not have the authority to grant.

Claims as here presented are without merit and should be denied. Carrier respectfully requests that Board so rule.

(Exhibits not reproduced.)

OPINION OF BOARD: On January 4, 1958, at Duff, Indiana the Conductor on Extra 5979 North took a train order by phone from an operator at Worthington, Indiana, thirty-eight miles north of Duff. The order reads as follows:

"Extra 5979 north take siding meet extra 6005 south at Elnora instead of at Old Main at Duff."

This order changed the meet of the two trains from Duff to Elnora, sixteen miles north of Duff.

On March 3, 1958, the conductor of an M of W Crane received the following order by phone from an operator at Plainville, Indiana, ten miles north of Duff, as follows:

"MOTOR 376 RUN EXTRA DUFF TO ASHBY."

As pointed out in the Carrier's Statement of Facts, there is no operator employed at Duff, the point involved in the instant claim.

The Claimants presented in support of their position Rules on the Scope of Employment, Seniority and Displacement Rights, Vacancies and New Positions, Special Awards and Awards of this Division.

The Carrier in responding to the claim denied that the Scope Rule provided for situations where an operator is not employed. In addition Rule 19, Train Order Rule, provides for the use of Operators to handle train orders at places or locations where Operators are employed. Thus at points where no operator is employed the handling of train orders is not exclusively reserved to the operators.

The question presented in this docket: Under the Rules herein does the work claimed belong to employees covered by this Agreement to the exclusion of all others?

We have read many Awards of this Division covering similar Agreements, factual situations and claims, and there is a conflict in the Awards. However, we are of the opinion that according to the record, facts presented and Awards offered in support of this claim there was no violation of the Agreement relating to train orders. Furthermore, we find no attempt or plan to shift work of a permanent nature to other employees at other locations at the expense of another class of employees. Therefore this 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 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 7th day of February 1964.