

Award No. 12495

Docket No. TE-10650

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**RICHMOND, FREDERICKSBURG AND POTOMAC
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Richmond, Fredericksburg and Potomac Railroad, that:

1. Carrier violated the terms of the Telegraphers' Agreement, when on the 15th day of August, 1957, it permitted and required Conductor Wingfield on Extra 1105 to handle (receive, copy and deliver) train order No. 3, addressed to C&E of that train at Guinea, Virginia.

2. Carrier shall compensate the senior idle telegrapher (extra in preference) for a day's pay — eight hours at the minimum pro rata rate August 15, 1957, for the aforesaid violation.

3. Carrier violated the terms of the Telegraphers' Agreement, when on the 29th day of August, 1957, it permitted and required Conductor C. R. Wade on Extra 56 South to handle (receive, copy and deliver) train order No. 2 addressed to that train at Guinea, Virginia.

4. Carrier shall compensate the senior idle telegrapher (extra in preference) for a day's pay — eight hours, at the minimum pro rata rate August 29, 1957, for the aforesaid violation. The name of the employe entitled to the compensation to be determined by a check of Carrier's records.

5. Carrier violated the terms of the Telegraphers' Agreement, when on the 16th day of August, 1957, it permitted and required Conductor Wingfield to handle (receive, copy and deliver) train order No. 1 addressed to C&E Extra 1105 at Guinea and train order No. 2 addressed to C&E of Extra 1109 at the same location.

6. Carrier shall compensate the senior idle telegrapher (extra in preference) for a day's pay — eight hours at the minimum pro rata rate, August 16, 1957, for the aforesaid violation.

7. Carrier violated the terms of the Telegraphers' Agreement, when and because it permitted and required Conductor C. R. Wade on Extra 104 South, to handle (receive, copy and deliver) train order No. 1 addressed to his train at Guinea, Virginia, September 28, 1957.

8. Carrier shall compensate the senior idle telegrapher (extra in preference) for a day's pay—eight hours at the minimum pro rata rate, September 28, 1957, for the aforesaid violation. The name of the employe entitled to the compensation to be determined by a joint check of the Carrier's records.

9. Carrier violated the terms of the Telegraphers' Agreement, when and because it permitted and/or required Conductor Beadles on Extra 103 to "OS" the arrival time of his train at Guinea, Virginia, and transmit to the train dispatcher at Richmond the consist of his train on November 14, 1957.

10. Carrier shall compensate the senior idle employe (extra in preference) for a day's pay—eight hours at the applicable rate, November 14, 1957, for the aforesaid violation. The name of the employe entitled to compensation to be determined by a joint check of the Carrier's records.

11. Carrier violated the terms of the Telegraphers' Agreement, when and because it permitted and/or required Conductor Beadles on Extra 104 to "OS" the arrival time of his train at Guinea and transmit to the train dispatcher a consist of his train on October 24, 1957.

12. Carrier shall compensate the senior idle employe (extra in preference) for a day's pay—eight hours at the applicable rate October 24, 1957, for the aforesaid violation. The name of the employe entitled to the compensation to be determined by a joint check of the Carrier's records.

13. Carrier violated the terms of the Telegraphers' Agreement, when and because it permitted and/or required Conductor Beadles on Extra 101 to "OS" the arrival time of his train at Guinea, Virginia, and transmit to the train dispatcher a consist of his train on October 31, 1957.

14. Carrier shall compensate the senior idle employe (extra in preference) for a day's pay—eight hours at the applicable rate October 31, 1957, for the aforesaid violation. The name of the employe entitled to the compensation to be determined by joint check of the Carrier's records.

15. Carrier violated the terms of the Telegraphers' Agreement, when and because it permitted and/or required Conductor Beadles on Extra 104 to "OS" the arrival time of his train at Guinea, Virginia, and transmit to the train dispatcher at Richmond a consist of his train on November 7, 1957.

16. Carrier shall compensate the senior idle employe (extra in preference) for a day's pay—eight hours at the applicable rate November 7, 1957, for the aforesaid violation. The name of the employe entitled to the compensation to be determined by a joint check of the Carrier's records.

apprehension expressed on behalf of the Claimant, however, to the effect that a denial of this Claim will open the door to widespread abuses. This Board has always endeavored to interpret rules so as to preserve their purposes and the intent of the parties."

In an analogous case involving an identical train order rule, the Board held in Award 6863 that—

"The paramount and decisive factor precluding a sustaining Award in the instant case is to be found in the terminology of Article 21 itself. True, subsection (a) thereof provides that no employe other than covered by the Agreement, and train dispatchers, will be permitted to handle train orders except in case of emergency. But that is not all. Nevertheless, and notwithstanding, in the next breath, so to speak, subsection (b) of the same Article, which we repeat for reasons of emphasis, provides:

'If train orders are handled at stations or locations where an employe covered by this Agreement is employed but not on duty, the employe, if available or can be promptly located, will be called to perform such duties and paid under the provisions of Article 7; if available and not called, the employe will be compensated as if he had been called.'

When proper consideration is given to everything that has been heretofore stated, and due note is taken of its form and position as incorporated in Article 21, there can be little doubt that subsection (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 employes."

* * * * *

In conclusion, the Carrier submits it has shown that the claims are without merit, unsupported by any rules, practice or precedent, or on any logical premise, but merely constitute an attempt on the part of the Organization to secure through an award from the Board an interpretation not intended by the parties when the rules were negotiated and is a further effort to force the Carrier to establish telegraphers' positions where none are required and could not possibly serve any useful purpose. It is clearly an unjustified make-work demand and all the claims involved should be dismissed or denied for the reasons stated herein.

OPINION OF BOARD: The facts in this case are similar to those which we considered in Award No. 12494 (TE-10649) and that award is controlling here insofar as claims 1 through 8 are concerned.

Claims 9 through 16, while similar, deal with conductors who "OS-ed" the arrival of their trains. An OS is not a train order and, therefore, does not come within the purview of Article XVII of the Agreement.

The Organization has only the Scope Rule on which to rely. As we said in Award No. 12494 (TE-10649), the Scope Rule was general in character and only upon proof that tradition, historical practice and custom supports the claim of exclusive jurisdiction of this work can the Organization prevail. This the Organization has failed to prove.

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 Carrier violated the Agreement to the extent set forth in the Opinion.

AWARD

Claims No. 1, 3, 5 and 7 are sustained.

Claims No. 2, 4, 6, 8, 9, 10, 11, 12, 13, 14, 15 and 16 are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1964.

CARRIER MEMBERS' DISSENT TO AWARDS 12494, 12495,
AND 12496, DOCKETS TE-10649, TE-10650, AND TE-10651

Referee Benjamin H. Wolf

In these Awards the majority committed error by failing to apply the well-established rule of contract construction, that of construing the rule in its entirety, each paragraph being read in light of the others, to ascertain the parties' intent. (Awards 11767 and 10785.) Had this well-established rule been applied the consistent, harmonious and sensible result would have been that Article XVII applied only at stations or locations where an employee covered by the Agreement is employed.

For this and other reasons the awards are erroneous and we dissent.

R. A. DeRossett
R. E. Black
W. F. Euker
G. L. Naylor
W. M. Roberts