

Award No. 12648

Docket No. TE-11517

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, 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 & Potomac Railroad that:

1. Carrier violated the agreement between the parties when it failed and refused to compensate Agent-Telegrapher T. L. Gilman, Ashland, Virginia for one call for January 17, 1959, account train order handled at that station by Conductor S. I. Turner of Extra 1104 South at 2:04 P. M. on that date.

2. Carrier shall be required to compensate the Claimant, T. L. Gilman, the sum of \$7.56 representing compensation for one call—3 hours—at the pro rata rate of pay for January 17, 1959.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between the Richmond, Fredericksburg & Potomac Railroad Company, Richmond Terminal Railway Company, Potomac Yard, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The agreement was effective April 10, 1953, and is by reference made a part of this submission as though set out herein word for word.

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

This claim involves the failure of the Carrier to pay to the claimant compensation as provided in the rule of the agreement shown as Article XVII(b), which provides:

"The handling of train orders at telegraph or telephone offices is restricted to employes under the scope of this agreement and Train Dispatchers, except in emergency. In emergency, if an employe under the scope of this agreement is available or can be promptly located he must be called to handle train orders and if not so called will be paid as provided by the call rule."

We submit that the Third Division should not interpret paragraph (b) of Article XVII to make it applicable to emergency situations as defined in paragraph (c) thereof. If the parties had intended paragraph (b) to be applicable in cases of emergency the rule would have been so written.

In conclusion, the Carrier submits that this claim is not supported by any rule or precedent but merely constitutes an attempt on the part of the Organization to secure an interpretation not intended by the parties when Article XVII was negotiated. It would be extremely illogical to pay a "call" to a telegrapher who has no more right to handle a train order in case of emergency than any other employe. Under such circumstances, when two or more crafts have a right to perform work, the performance of the work by one craft does not give the other craft the right to a penalty for not performing the work.

OPINION OF BOARD: In the instant dispute, there is no disagreement between the parties as to the relevant facts. An emergency situation developed on Saturday, January 17, 1959, at Ashland, Virginia when the regularly employed Agent-Telegrapher, the Claimant in this case, was not on duty. A derailed car blocked the main line south of Ashland. The accident took place at approximately 12:55 P.M. and the Conductor copied a train order addressed to his train at Ashland. These facts are not at issue and it is accepted that an emergency did exist. Whereas the Petitioner relies on other Articles of the agreement, it would serve no useful purpose to go into great detail as to their applicability to this case, since at best they are collateral to the principal issue. It becomes apparent from the examination of the record that the Petitioner is basing his case principally on Article XVII quoted below:

"ARTICLE XVII

HANDLING TRAIN ORDERS

"(a) No employe other than covered by this Agreement and train dispatchers will be permitted to handle train orders except in cases of emergency.

(b) 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 VII; if available and not called, the employe will be compensated as if he had been called.

(c) Emergencies as specified in the preceding paragraphs of this Article shall include only casualties or accidents, storms, engine failures, wrecks, obstructions to tracks, washouts, tornadoes, slides or unusual delays due to hot boxes or break-in-two, that could not have been anticipated by the dispatcher when the train was at the last previous open telegraph office, and which would result in serious delay to traffic"

The Petitioner does not in the main question the right of the Carrier to have someone other than those employees covered by the agreement, handle train orders in an emergency such as the instant case. It does however contend that since an Agent-Telegrapher was employed at Ashland, although not on duty, but available and capable of being promptly located, should be compensated even though not called. It would in effect have this Board read and interpret subparagraph (b) of Article XVII without any reference to or in fact acknowledgment of subparagraph (a) of that Article. We do not think this is a sound position. The entire Article must be read, one paragraph with the other.

The meaning and intent of the entire Article XVII seems to us to be clear, unequivocal, and unambiguous. Subparagraph (b) is qualified by (a) to the extent that in bona fide emergencies, employees not covered by the Agreement and exclusive of Train Dispatchers, are permitted to handle train orders. Now reading this in conjunction with (b), it appears clear that if the intent of the Contracting parties was to have compensation paid regardless of whether or not there was an emergency, the Article in question could so have stated. It does not so do. Without the emergency situation confronting us in this case, the claim would be completely consonant with the provisions of Subparagraph (b), and there would be no question that the claim would be sustained. We accordingly must deny the 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 June 1964.