

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Southern Pacific Company (Pacific Lines) that:

1. Carrier violates and continues to violate the Agreement between the parties when it requires or permits employes not covered by the Agreement to handle train orders at Stockton, California.

2. Carrier shall compensate employes under the Agreement in the amount of a minimum call payment, two hours at the overtime rate as follows:

A. R. W. Wescoe, regularly assigned Manager-Wire Chief-Telegrapher, Stockton, on February 12, 13, 14, 15, 16, 19, 20, 21, 22, 23, 25, 27, 28, March 1, 2, 5, 6, 7, 8, April 2, 3, 4, 5, 6, 9, 11, 25, 26, 27, 30, May 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31, June 1, 4, 5, 6, 7, 8, 13, 14, 20, 21, 22, 27, 28, 29, July 4, 5, 6, 1957.

B. R. V. Hall, regular relief Manager-Wire Chief-Telegrapher, Stockton, on February 11, 18, 25, March 4, 11, 25, April 1, 8, 29, May 6, 13, 20, 27, June 3, 10, 17, 24, July 1, 8, 1957.

C. E. C. Lyman, extra relief Manager-Wire Chief-Telegrapher, Stockton, on March 9, 1957.

D. B. D. York, extra relief Manager-Wire Chief-Telegrapher, Stockton, on March 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 1957.

E. The occupant of the Manager-Wire Chief-Telegrapher position at Stockton on all dates subsequent to July 8, 1957 on which the violation occurs.

rent agreement, this is the first claim based on this practice which has been submitted to the carrier under Rule 29. In these circumstances the equities of the situation will be fully met, if subsequent to the date of this award, the interpretation herein placed upon Rule 29 will be controlling, without reparation for violations prior to that date."

In view of the fact, clearly established hereinabove, that petitioner has been living with the very situation here complained of prior to and within the life of the current Agreement, including revisions and reprinting thereof, effective March 1, 1951, carrier submits, in the event the Division considers the within claim with favor (a conclusion with which carrier could not agree), reparation should likewise not be provided in the Division's FINDINGS in this instance.

CONCLUSION

Carrier asserts that it has conclusively established that the claim in this docket is entirely lacking in either merit or agreement support and therefore requests that if not dismissed it be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The record here shows that notice of the pendency of this dispute was served on the Brotherhood of Railway Clerks in accordance with the requirements of Section 3, First (j) of the Railway Labor Act. That Organization declined to participate in these proceedings. Accordingly, the Board may properly consider the dispute on the merits.

The relevant facts are that prior to February 11, 1957, train crews stopped at the telegraph office at Stockton, California, enroute to the yard, to take delivery of train orders from telegraphers there employed. The Yard Office is located about two miles from the telegraph office. On February 11, this method was changed in that thereafter the train orders were taken by messengers not covered by the Telegraphers' Agreement from the telegraph office to the yard office where they were given to the Yardmaster for final delivery to the train crews.

The Agreement in evidence contains the so-called standard train order rule reading as follows:

"Rule 29

"HANDLING TRAIN ORDERS

"Section (a). No employe other than covered by this agreement and train dispatchers shall 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 emergency, in which case the employe shall be paid for the call."

It is the Employees' position that Rule 29 (a) was violated by the aforesaid method of delivering train orders.

The issue of whether the words "to handle train orders" include the right of covered employes to deliver them is not new. In 1935, this Board held it was a violation of the Telegraphers' Agreement for a conductor to deliver train orders to a work train crew. (Award 86). Since that time

the Board has repeatedly held that handling of train orders is work belonging exclusively to employes covered by the Telegraphers' Agreement. Moreover, we have held on more than one occasion that there must be **actual delivery** by telegraphers where the standard train order rule is effective. (Awards 1166, 1169, 1170, 1422, 1680, 1879, 2928, 3611, 3612, 4057, 5013, 9657, 9319, 10239, 11653).

Some of our awards, on the other hand, have held, in effect, that constructive delivery is proper under the rule. Thus in Award 8327, Referee McCoy found that it was permissible for a telegrapher to place a train order on the train register where it was picked up by the conductor to whom it was addressed. The Referee carefully distinguished that case from those where some employe other than a telegrapher "did some act of handling a train order . . ." The decision there was squarely based upon a finding that "no human hand intervened between the telegrapher and the train crew to whom the order was addressed . . ." and that "no one but a telegrapher 'handled' the train order." (Cf. Award 7343). Again in Award 9988, Referee Begley found, among other things that delivery of train order by pneumatic tube was no violation of the rules.

Notwithstanding the conflict in our Awards on this issue, where, as here, the standard train order rule is in effect, the weight of authority clearly supports the right of employes covered by the Telegraphers' Agreement in handling train orders to receive, copy, prepare and deliver them to the crews addressed. See Awards 1168, 1302, 1713, 1719, 5810, 6678, 7967, 12371, 12372.

Evidence introduced by the Carrier at this level of appeal which purports to show a practice of messengering train orders by other than telegraphers on this property was not presented during the progress of the claim on the property. It may not, therefore, properly be considered under the Board's procedural rules. (Circular No. 1).

In the light of the foregoing, this claim will be sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September, 1964.