

Award No. 13152
Docket No. TE-12237

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORFOLK SOUTHERN RAILWAY COMPANY

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

1. The Carrier violated the agreement between the parties when it permitted or required employes other than covered by the agreement to handle train orders at New Bern, North Carolina, on the dates of August 13, 15, 17, 19, 21, 27, 28, 29, 31; September 3, 4, 9, 11, 12, 14, 18, 21, 23, 26, 30; October 1, 3, 23, 24, 27, 31; November 2, 4, 6, 9, 14, 16, 21, 23, 28, 30; December 4, 7, 10, 11, 14, 16, 19, 21, 24, 26, 28, 30, 31, 1959.

2. Carrier shall now be required to compensate the regularly assigned operator-clerk at New Bern, Mr. A. H. Whitty, a "call" payment (a minimum allowance of two (2) hours at overtime rate) for each date set forth above.

EMPLOYES' STATEMENT OF FACTS: The Telegraphers' Agreement governing the parties is on file with your Board. The following rules are currently in effect:

"This Agreement, entered into on this the first day of August, 1937, by and between M. S. Hawkins and L. H. Wildholz, Receivers of Norfolk Southern Railroad Company, party of the first part, and the craft of employes as listed herein in the employ of party of the first part, performing work in the class or classes coming under the scope as defined in Article (1) of this agreement, represented by the Order of Railroad Telegraphers, party of the second part, during the life of this agreement, which it is mutually agreed shall supersede agreement dated December 16, 1926, between Norfolk Southern Railroad Company and employes working as telegraphers, telephoners, agents, agent-telegraphers, agent-telephoners, levermen, and others coming under the scope or class of work as defined in Article (1) of agreement dated December 16, 1926.

to the conductor when the latter was registering his train. He merely, instead of doing so physically, did so by placing same on the register book, where the conductor took possession of same. There was no violation of the agreement, as has been fully set forth in the well-reasoned findings of the above-mentioned recent awards, and the respondent holds the claim should be denied, and urges your Board to so hold.

OPINION OF BOARD: The Claimant in this case contends that the Carrier violated the Agreement when it required him to leave certain train orders and clearance cards on the office train registry book when he went off duty, to be picked up later by the conductor of certain trains. The Petitioner maintains that the Claimant should have been permitted to personally deliver the orders and clearance cards to the conductor, despite the fact that this would have required his remaining on duty after the end of his shift, and the payment of overtime, citing Rule 15 of the Agreement, which reads as follows:

"ARTICLE 15. HANDLING TRAIN ORDERS

No employes other than covered by this schedule and train dispatchers will 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, conductors or engineers will be permitted to do so, in which case the telegrapher will be paid for the call."

The Carrier, on the other hand, states that there was no violation of the rule as alleged since no one other than a telegrapher handled the train orders and, indeed, the rule itself does not require personal delivery of train orders by a telegrapher. Neither side to this controversy maintains that an emergent situation was involved on any of the dates specified.

The precise issue in this case is not new to the Board. It has been the subject of considerable controversy over an extended period of years, and was decided once again in Award No. 12240 (Referee Coburn). The specific question confronting the Board in that case was identical to the instant case. It was stated in that case as follows:

"... Where the standard train order rule is in effect, may the Carrier require a Telegrapher to leave train orders in a specified place for pick-up by a train crew, or must the delivery be made to the crew by the Telegrapher personally?"

Referee Coburn further stated:

"This precise issue under substantially the same facts as are present here has been dealt with by the Board in a long line of cases going back almost a quarter of a century to Award 1166 (Referee Hilliard), handed down in 1940. Eighteen out of the twenty-one cases decided have held that personal delivery by the Telegrapher to the crew is required. The three denial awards (1821, 8327, 11473) held delivery complete as to the Telegrapher when orders were placed in waybill box or other receptacle for pick-up by the train crew.

It is apparent that the weight of authority, in terms of numbers of Awards and under years of consistent interpretation and application of the rule, clearly sustains Petitioner's position on the issue

and facts present here. This is not to say that the denial Awards were unsound or palpably in error. What disposes of the issue, in our opinion, is the principle of stare decisis. Where, as here, the Board is confronted with a long line of precedents which first postulate and then maintain a consistent interpretation of contract language, we should refrain from disturbing what ought to be a settled matter. . . ."

In view of the foregoing, the claim will be sustained.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of December 1964.