

Award No. 13160

Docket No. TE-12515

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, 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. Carrier violates the Telegraphers' Agreement when it requires the third shift operator-clerk at Glenwood Yard Office to pin train orders, clearance cards and messages to train register and effect delivery thereof by having the conductor of the trains addressed remove the same from the register and otherwise handle these communications at an hour when no operator-clerk is assigned or on duty.

2. We request that the senior idle operator, extra in preference, be paid a day's pay on January 10, 1960 when Extra 1614 South, and on January 17, 1960 when Extra 1603 South cleared themselves in the manner described in (1) above, because of such violative actions. According to our records, the senior idle extra operator on January 10 was N. T. Hinson and on January 17, G. E. Phillips.

3. It is also our request that the senior idle operator, extra in preference, shall be paid a day's pay on each subsequent date a similar violation occurs and continuing until such time as the violations are discontinued.

(NOTE: The above claims were subsequently modified to the extent requesting payment of "Calls" in behalf of the regularly assigned employees at Glenwood Yard, instead of a day's pay on behalf of extra employees.)

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

Order No. 332; he copied the train order direct from the train dispatcher; he repeated the train order direct to the train dispatcher; he completed the train order; and he then placed the train order on the train register as instructed. No detail in connection with the receipt of Train Order No. 322 from the inception of that order until it came into the hands of the conductor was delegated to or assumed by any other employe, according to the carrier." (Emphasis ours.)

and after a very lengthy Opinion in that award the Division reached the conclusion that the agreement was not violated, and the claim was denied.

Also in Award 8327 involving Order of Railroad Telegraphers vs. Maine Central Railroad, the same issue was involved; that award was rendered with Referee McCoy participating. Attention is directed to the train order rule there involved, which bearing similarity to the train order rule involved in this dispute, contains even more stringent language than does the rule in this case. In the Opinion it is stated: "The train order rule there is quite clear and it has not been violated. No one other than a telegrapher handled the train orders in question."—and further—"Neither the Scope Rule nor the Train Order Rule is violated except when some employe other than a telegrapher performs telegrapher's work." Citation to that Award 8327 is hereby made, because in well-reasoned findings the Division casts aside prior awards to the contrary and repudiates same, and reaches the conclusion that the agreement was not violated and the claim was denied.

In conclusion, the respondent carrier holds that there was no violation of the agreement in this instant case; the train dispatcher transmitted the train orders to the operator-clerk during his on duty and under pay hours of assignment; the entire handling of the train order, that is its transmission, its repetition to the dispatcher, its completion, etc., was handled only by an employe (the assigned operator-clerk under the ORT agreement). The manner of the delivery of the train order is immaterial to the application of the rule. The operator-clerk, had he been on duty, would have delivered the order 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: On November 15, 1959 the Carrier eliminated the first trick operations for operator-clerk on Sundays at the Glenwood Yard, giving instructions to the third trick operator on Saturday night to:

"... leave train orders with waybills. Make the morning yard check. Make the interchange if time allows. If not leave a note to succeeding (second trick) operator-clerk. . . ."

The Organization filed the instant claim alleging that the pinning of orders, messages, clearance cards, etc., to the register did not constitute proper handling of these items as required by Article 15 of the parties' Agreement, which states in part.

"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 Organization alleges that the term "handling" as used in Article 15 requires actual delivery by the operator and has not been complied with in this case. Accordingly it urges the Board, in accordance with its letter to the Carrier dated December 31, 1960 and in compliance with the terms of Article 4 of the parties' Agreement, to award call-in pay to the operators thus deprived of their rightful work.

The Carrier denies liability for call-in pay on the grounds that the leaving of orders to be picked up constituted effective and complete "handling" of these items within the scope of the operators authority, and did not constitute an assignment of operators work to anyone outside the Organizations jurisdiction. It therefore urges denial of the claim.

At issue in this case is whether the leaving of orders and other items does in fact constitute authorized "handling" by the operator within the terms of Article 15 of the parties' Agreement.

As noted by Referee Hilliard in Award Number 1169:

"... the carrier sought to make delivery of train orders at a station where a telegrapher was employed, through means other than its telegrapher. One explanation is that the telegrapher was not on duty at the time of the departure of the trains in question, but a sufficient answer is that the telegrapher, although not on duty, was available and subject to call, a situation comprehended in the agreement."

Further, in Award No. 1422 (Bushnell, Referee):

"... Rule 211 of the Carrier's Operating Rules requires that when a train order shall be 'complete,' the telegrapher shall 'personally deliver a copy to each person addressed.' Of course, as the carrier maintains, operating rules are not a part of the working agreement obtaining between the parties, but in the matter of the interpretation of Article 16 of the Agreement, we think it legitimate to have recourse to Rule 211. It is reasonable to believe that when Article 16 was entered into, the parties thereto contemplated that the employees' right 'to handle train orders' mean that after the manner stated in Rule 211 they were to make delivery of such orders to the conductor and engineer personally, and that when a telegrapher was available at a telegraph office, as here, he would perform the service in the manner indicated by that rule, in usual course if on duty and pursuant to 'call' if off duty."

The reasoning of the Board in these two Awards has been endorsed in a score of cases that have come before the Board in the last two decades. Although a minority of awards have denied relief to Claimants under circumstances similar to those in the instant case, it is our opinion that the majority view has greater validity and should be endorsed in this case.

The claim will be sustained, but only to the extent that it grants the two hours at overtime rate specified in Article 4 of the parties' Agreement for each violation.

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 for 2 hours at overtime rate for each violation pursuant to the terms of Article 4 of the parties' Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

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