

Award No. 13268

Docket No. TE-13687

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

READING COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Reading Company that:

1. Carrier violated the parties' Agreement on May 8 and 12, 1961, because it permitted or required employees not covered by said Agreement to copy and handle train orders at New Hope, Pennsylvania.

2. Carrier shall now be required to compensate L. G. Anderson, regularly assigned Agent at New Hope, a call (3 hours' pay) for each of the two above violations.

EMPLOYES' STATEMENT OF FACTS: In respect to the claim of May 8, 1961, the incident which precipitated the claim was caused when at 10:01 P. M., Train Order No. 236 was transmitted to the conductor of Engine 663 at New Hope via relay through the train order office at Glenside, which is nineteen miles from New Hope.

The train order read as follows:

"New Hope May 8, 1961
Via 'YM' Tower Glenside

To: C&E Eng 663 at New Hope

Eng 663 run extra New Hope to Roslyn.

Com. 1001 P. M. Opr. Baumer Sup. E.T.H. Repeated by Albright
at New Hope 10:02 P. M."

The claim of May 12, 1961, involved a similar situation with the same set of facts and circumstances prevailing. The train order in this instance, transmitted at 10:44 P. M. read:

"May 12th, 1961
At; New Hope via
'YM' Tower Glenside

by Carrier's train dispatcher to the operator at Glenside, the nearest open tower, to effect delivery by telephone to the crew at New Hope, which handling did not violate any rules of agreement with the Telegraphers' Organization.

Further, Carrier desires to point out that this is a claim for penalty only and the Board has ruled in many cases that it will not penalize a Carrier in the absence of a specific rule violation. Here in this docket, there has been no violation of the specific rule—Article 34—which refers to the handling of train orders and, therefore, Carrier maintains that there is clearly no equitable basis in the rules to inflict upon Carrier the penalty here claimed.

Under all the facts and circumstances present in this docket, Carrier respectfully submits that there has been no violation of any rules of its agreement with the Telegraphers' Organization and maintains that the claim of the Organization should be denied in its entirety.

OPINION OF BOARD: This dispute involves the handling of train orders by employe not holding seniority under the Telegraphers' Agreement at a station where an operator was employed, but not on duty.

Article 34 of the Agreement is controlling in this dispute.

Handling Train Orders

"No employe 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 an emergency, in which case the telegrapher will be paid for the call."

This holding is supported by a long line of awards.

The Agreement was violated when employes not holding seniority under the Telegraphers' Agreement handled train orders

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 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 5th day of February 1965.