

Award No. 13472

Docket No. TE-12243

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
GULF, MOBILE AND OHIO RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad, that:

1. Carrier violated the agreement between the parties when on December 3, 1959 it required or permitted an employe not covered by the agreement to handle train orders at Beaumont, Mississippi, at a time when the agent-telegrapher was off duty.

2. Carrier shall compensate Agent-Telegrapher B. M. Bagwell in the amount of a minimum call payment.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

Beaumont, Mississippi and Laurel, Mississippi are stations on the Alabama Division. At Beaumont there is a position of agent-telegrapher with assigned hours of 8:00 A.M. to 5:00 P.M. (one hour meal period), assigned rest days Saturdays and Sundays, position not relieved on rest days. At Laurel there are three positions of telegrapher-levermen located in a tower furnishing continuous service around the clock seven days per week.

On December 2, 1959, engine SRS 132 tied up at Beaumont. SRS 132 is a mobile piece of equipment designed to detect flaws and defects in rails while traveling over the track. It was scheduled to resume work at 7:00 A.M. on December 3 starting from Beaumont. The crew assigned to operate work train SRS 132 after tying up at Beaumont on December 2, traveled to Laurel by highway bus as Laurel is their home terminal.

The train dispatcher issued the following orders to the operator at Laurel:

"Form	GULF, MOBILE & OHIO RAILROAD COMPANY	Form
19		19

TRAIN ORDER NO. 50

Dec 2, 1959

C&E Southward Extra Trains	at Laurel
at Eng SRS 132	at Beaumont

On Dec 3rd Eng SRS 132 works extra 701 seven naught one AM

delivery of train orders addressed to them for execution for the purpose of themselves making a later delivery to themselves at the point of execution".

Award No. 8012, ORT vs. The Maine Central, Referee H. Raymond Cluster, decided July 17, 1957. This is the most recent Award on the question here presented. Because the Opinion of the Board covers some three (3) pages, in the interest of brevity and for ready reference, a copy of the Opinion of the Board is attached.

The Opinion analyzes and distinguishes practically every decision of the Board on the question here at issue. The Board pointed out in its Opinion:—

" In this case we are dealing with the special situation where a train order is delivered by a telegrapher to the same train crew which later executes it, although at a place other than where the delivery occurred and governing a different or continuing movement". (Emphasis ours.)

The engineer obtained his orders at Machias, Maine to be executed at Salmon Falls, Maine. The Board, in denying the case, stated in part:

"In these circumstances, we are persuaded to follow the views announced in Awards 1489, 4819 and 6609, that to hold that the engineer here transported the order from Machias to Salmon Falls and delivered it to himself at the latter place would be 'to set up a fiction', to assume 'a most involved and somewhat anomalous situation and to 'indulge in a hypothesis' contrary to fact."

The train order rule of the GM&O Telegraphers' Agreement is similar to the train order rule before the Board in Awards 1489 (Referee Sidney St. F. Thaxter), 4819 (Referee Curtis G. Shake) and 6609 (Referee Hubert Wyck-off). One need only substitute the names of Laurel, Mississippi where the conductor in the present case picked up the train orders and Beaumont, Mississippi where the train orders were executed, for the locations in the above referred to four Awards, each holding that under similar agreements and facts that there was no violation of the Telegraphers' Agreement. Furthermore, these Awards recognize a practical railroad procedure that train orders are for the direction of the train crew and are often times executed at locations where telegraphers are employed or are not employed, depending upon the circumstances. It would be for all practical purposes impossible for a telegrapher to be on duty at a location where each train order is executed and to require additional payment to telegraph operators under such circumstances would amount to nothing but windfalls and obviously contrary to the meaning and intent of the Telegraphers' Agreement.

CONCLUSION

To call the telegrapher on duty at Beaumont, Mississippi and have him duplicate the duties of the telegrapher at Laurel, Mississippi in this case would be contrary to the Agreement, all prior decisions of this Board in point, and contrary to efficient and economical management.

The claims are not supported by the Agreement, prior interpretations of this Board or practical railroad experience, and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The essential facts of this case are that a Conductor, an employe not within the purview of the Telegraphers' Agreement, on his way to work dropped by the telegraph office at Laurel, Mississippi, re-

ceived his train orders and proceeded by automobile to Beaumont, Mississippi where he went to work. At Beaumont, the subject train orders were delivered to the crew by the Conductor. The Claimant, the agent-telegrapher at Beaumont, regularly employed as such, was off duty.

The agreement between the parties is one effective June 1, 1953. The applicable portion of the agreement pertinent to train orders is Rule 15, which reads as follows:

"RULE 15
"Train Orders

"No employes other than covered by this agreement 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."

A review of the record in this case reveals that the Claimant was:

1. employed as an agent-telegrapher at Beaumont.
2. available or
3. could have been promptly located.

This is not a novel issue before this Board, and the above quoted train orders, being more or less standard throughout the industry, has been subjected to interpretation many times. We have been presented with numerous citations supporting the Claimant's position, many of which involve the same issue and the same factual situation. We agree with the reasoning of these awards and rely on Awards 86, 1096 and 1167 among others, including 11989 and 12077 involving these same parties. We will sustain 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of April 1965.