

Award No. 13499  
Docket No. TE-12940

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

John H. Dorsey, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA  
(Texas and New Orleans Railroad Company)**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Atlantic System), that:

1. Carrier violated the Agreement on Saturday, September 24, 1960, when it required or permitted Conductor C. S. Lauman of Train No. 239 to copy Train Order No. 72 at Boutte, Louisiana, at 8:43 P. M.
2. Carrier shall compensate Telegrapher P. D. Austin for 8 hours' pay at time and one-half rate for the violation on Saturday, September 24, 1960.

**EMPLOYES' STATEMENT OF FACTS:** The Avondale Sub-Division of this railroad extends from New Orleans to Lafayette Yard, a railroad distance of 147.4 miles. Actually Avondale is located on the west side of the Mississippi River from New Orleans and is the freight terminal for the Southern Pacific Lines. Continuous train order service is available at Avondale in a telegraph and train order office located at the west end of the yard. Boutte, Louisiana is located 12.5 miles west of Avondale. Paradis, Louisiana is located approximately 3 miles west of Boutte. The Carrier has a position of Agent-Telegrapher at Paradis, which is assigned five days of work per week, Monday through Friday. The Agent-Telegrapher at Paradis makes daily trips to Boutte for the purpose of attending to railroad business at some large industrial plants located there.

On Saturday, September 24, 1960, Train No. 239, a westbound second class freight train, left Avondale en route to Lafayette, which is the next terminal. This train departed Avondale at 7:10 P. M. Extra 431 East, which was regular eastward second class Train No. 244, arrived at New Iberia at 6:45 P. M. Extra 431 East was delayed at New Iberia until 7:35 P. M. because of a car with a hot box. Extra 431 East had arrived at New Iberia at 6:47 with the hot box and the Carrier had knowledge of this situation. It is to be observed this was before departure time of Train No. 239 from Avondale. New Iberia is located 101.7 miles west of Boutte.

Train No. 239 arrived at Boutte and the train dispatcher transmitted the following train order to the conductor of Train No. 239:

right, and exclusive at that, to handle train orders at telegraph or telephone offices where an operator is employed. Rule 17 (a) gives them this right, but this exclusive right, by the clear and unambiguous language of the rule, restricts the right solely to "telegraph or telephone offices where an operator is employed". In the instant dispute, no telegrapher is employed at the point where the conductor copied the train order. Award 7153, with Referee Larkin, involved handling a train order at a point where no telegrapher was employed and with reference to the train order rule it was held:

"Article 20 obviously does not apply. By its very language it is applicable only to situations where 'an operator is employed or can be promptly located'. Since no operator has been stationed at Romina \* \* \* we cannot conclude that this rule applied \* \* \*"

and in Award 5866, with Referee Douglass, it was held:

"Under the provisions of Rule 29 (the train order rule) of the Agreement it is our opinion that Section (a) would have been violated by the copying of train orders by train service crews if an operator had been employed at Pastura. \* \* \* But the controlling part of Rule 29 (a) insofar as this case is concerned is that part which qualifies the restrictions by limiting its application to offices where an operator is employed."

In Award 1396, with Referee Stone, it was held, with reference to the train order rule, that:

"\* \* \* In any event, this case involves no telegraph or telephone office 'where an operator is employed'. In short, the coverage of Rule 16 simply does not reach this case. \* \* \*"

The Carrier respectfully reiterates that the principal issue in this case has already been decided in Third Division Award No. 7953, rendered on June 8, 1957.

#### CONCLUSION

The Carrier has shown that this claim is without merit and should be denied, first because there was no rule violated, second, there was no rule to support the claim, and third, there has been a train order rule in the Conductors' Agreement while nine Telegraphers' Agreements have been negotiated and the Telegraphers' Train Order Rule was adopted.

Carrier asserts, all conditions present in Award 7953 and present in this case and that the denial in that case is clearly controlling here, and respectfully requests that the claim be in all things denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Claimant held the position of Agent-Telegrapher at Paradis, Louisiana, Monday through Friday. His assigned duties required him to make daily trips to Boutte, Louisiana, a distance of 3 miles from Paradis, for the purpose of attending to Carrier's business at some large industrial plants located there.

On Saturday, September 24, 1960, Train No. 239 arrived at Boutte and the train dispatcher, not in an emergency, transmitted a train order to the

conductor. The Claim is that the transmission violated the Telegraphers' Agreement and prays for a monetary Award to Claimant for 8 hours' pay at time and one-half.

Rule 17 of the Agreement, insofar as material reads:

**"TRAIN ORDERS AND TELEPHONES**

(a) 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 an emergency, in which case the telegrapher will be paid for the call."

The undisputed facts establish that Claimant was employed at Boutte and Paradis. Therefore, the conductor's handling of the train order at Boutte, absent an emergency, violated Rule 17 (a). The Claimant is contractually entitled to pay for a call.

**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 Carrier violated the Agreement.

**AWARD**

Paragraph 1 of the Claim is sustained.

Paragraph 2 of the Claim is sustained only to the extent of payment for a call.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty  
Executive Secretary**

**Dated at Chicago, Illinois, this 27th day of April 1965.**