

Award No. 13712
Docket No. TE-12935

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYES UNION
(Formerly The Order of Railroad Telegraphers)

SOUTHERN RAILWAY COMPANY

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

1. Carrier violated the Agreement when on the 16th day of June, 1960, it failed and refused to permit M. J. Jennings, second trick Clerk-Telegrapher, Bulls Gap, Tennessee, to deliver Train Order No. 703 addressed to the C&E Eng 4218, but instead required Mr. Jennings to leave said Train Order in bill box at the end of his tour of duty (10:00) P. M., which orders were later picked up by train service employees of said train.

2. Carrier shall compensate M. L. Jennings for two (2) hours and forty (40) minutes at one and one-half times pro rata hourly rate of the second shift Clerk-Telegrapher position, Bulls Gap. (Pro rata hourly rate \$2.39).

EMPLOYEES' STATEMENT OF FACTS: Claimant M. L. Jennings was the assigned telegrapher on the second shift Clerk-Telegrapher position at Bulls Gap, Tennessee, on June 16, 1960. His assigned hours were 2:00 P. M. to 10:00 P. M. At 9:54 P. M. the train dispatcher transmitted by the use of telephone to Claimant Jennings, Train Order No. 703 which reads as follows:

"FORM
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SOUTHERN RAILWAY SYSTEM

FORM
19

Train Order No. 703
To: C&E Eng 4218

Date: June 16, 1960
At: Bulls Gap

After Extra 4171 West arrives at Bulls Gap Eng 4218 run Extra Bulls Gap to Leadvale Jct with right over second class trains

Made Complete

Time: 954 P.M.

Jennings, OPR"

The train addressed, namely Extra 4218 East, was not due to be called for service to leave Bulls Gap until 12:01 A. M., June 17. This was two hours and one minute after Claimant Jennings went off duty. Train dispatcher instructed Mr. Jennings to copy the train order and to leave the train order

The parties in Award 8327 had a train order rule similar to the one here involved.

The evidence of record does not support petitioner's contention that the agreement was violated, nor does it support the claim for pay. For the reasons set forth herein, the claim should be denied in its entirety, and carrier respectfully requests that the Board so decide.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier denies the violation of the Agreement but admits the facts as alleged in paragraph 1, of the claim.

The issue is whether the facts prove a violation of Rule 31 of the Agreement which is the so-called "Standard Train Order Rule."

When faced with like facts and arguments in Award No. 11788, we held that the Carrier party in that case violated the "standard train order rule." We reaffirm our holding in that Award and will sustain the claim in the instant case.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1965.

CARRIER MEMBERS' DISSENT TO AWARD 13712, DOCKET TE-12935

(Referee John H. Dorsey)

As reliance is placed upon Award 11788, our dissent to that award is, by reference, made a part of this dissent.

The award here sustains the claim though admittedly the Carrier did not permit employes not covered by the contract to handle the train orders involved. The train orders involved in this dispute were left in bill box by claimant telegrapher and were not subsequently "handled" or even touched by any-

one until picked up by the crew to whom they were addressed. Certainly inherent in such a claim is the obligation of petitioner to prove handling by non-contract employees, yet the majority ignored this and followed Award 11788 which sustained the claim merely because other referees in prior Awards had committed similar error.

The award is erroneous and we respectfully dissent.

/s/ R. A. DeRossett
R. A. DeRossett

/s/ W. F. Euker
W. F. Euker

/s/ C. H. Manoogian
C. H. Manoogian

/s/ G. L. Naylor
G. L. Naylor

/s/ W. M. Roberts
W. M. Roberts