Award No. 13805
Docket No. TE-12606

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Daniel Kornblum, Referee

PARTIES TO DISPUTE:

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

ILLINOIS TERMINAL RAILROAD COMPANY

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

1. (a). Carrier violated the Agreement between the parties when on June 1, 1960, it required or permitted an employe not covered by the Agreement to handle (receive, copy and deliver) Train Order No. 54 at Thermal No. 1.

(b). Carrier shall compensate R. D. Vallow, senior idle extra employe on the seniority district, in the amount of a day's pay ($19.98) at the minimum telegraphers' rate on the district.

2. (a). Carrier violated the Agreement between the parties when on June 22, 1960, it required or permitted an employe not covered by the Agreement to handle (receive, copy and deliver) Train Order No. 29 and a message at Roxana, Illinois.

(b). Carrier shall compensate J. C. Schultz, senior idle extra employe on the seniority district, in the amount of a day's pay ($19.98) at the minimum telegraphers' rate on the district.

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

LeClaire Tower is located in the vicinity of Edwardsville, Illinois, where this Carrier's tracks cross those of the Litchfield and Madison Railway and the New York, Chicago and St. Louis Railroad. Within the tower is a manually operated interlocking which controls a number of switches and signals governing train and engine movements in the surrounding territory. It is an office of communication handling train orders, messages, OS reports and other telegraphic work. It is a continuous office open twenty-four hours per day, seven days per week, requiring three basic telegrapher positions with a regular rest day relief position.

(b) An employe required to report for duty before his assigned starting time and who continues to work through his regular shift, shall be paid two (2) hours at the overtime rate for two (2) hours' work or less, and at the overtime rate thereafter on the minute basis for the time required to work in advance of his regular starting time."

Your Board has consistently held to such a penalty and should not deviate therefrom in the instant docket.

(Exhibits not reproduced.)

OPINION OF BOARD: Both claims in this dispute involve the handling of train orders at blind sidings. In each the orders were admittedly copied and received by trainmen, and not Telegraphers. At neither of the locations in point had Telegraphers ever been employed. Moreover, the Organization acknowledges that there are a number of other non-covered locations on this property where the long-term and accepted practice has been for train crews to receive and copy train orders directly from Dispatchers and without the intervention of Telegraphers or other qualified employes covered by the Organization's agreement.

At first blush, therefore, and in light of the virtual avalanche of the more recent decisions of this Board on this subject, there would seem to be little alternative except to deny these claims summarily. This result would appear to be especially indicated when it is noted that each of these claims is bottomed alone on the familiar and very general Scope Rule of this Agreement, without benefit of the standard clause for handling train orders usually found in the Telegraphers' Agreements with most other carriers (if benefit there any longer is in such a clause vis a vis situations of train orders handled at points where no Telegraphers are employed, compare Award 8687 with any one of the 57 more recent Awards on this aspect cited in the addendum to the brief of the Carrier submitted on panel argument of this matter). It has been repeatedly decided by this tribunal, in cases involving Telegraphers as well as other crafts and classes, that under a system-wide Scope Rule, general in character, the practice of reserving work exclusively to a given craft and class must also be shown to be "system-wide." In other words, differences in the practice from location to location on the property have been held to be fatal to such a showing (e.g., Awards 13579, 13694, 12704, 12701, 12383, 12356, 12257, 11506, and many others).

In this case, however, there appears to be a variation on this well-worn theme that deserves closer study. It devolves about the voluntary settlements by this Carrier of prior grievances concerning the handling of train orders allegedly at the selfsame two locations on this property as are described in the instant claims. A proper assessment of the portent of these settlements in relation to these claims requires a fuller recital of the facts.

The first claim in this dispute (item 1) involves the receipt and copying of a train order at a station on the property called Thermal No. 1. This is a location about a mile south of the LeClaire signal tower. The order was given by the Dispatcher to the Towerman at LeClaire, an employe covered by the agreement and eligible to handle train orders. It was then relayed by him, via radio-telephone, to a member of the train crew waiting at Thermal No. 1 where it was copied by the latter. The Carrier stresses the fact that the Towerman was not by-passed in this transaction and that the only conceivable deviation from the norm was that he did not make personal delivery of the order, but rather, used the more expeditious medium of the radio.

The voluntary settlements involving the handling of train orders at Thermal No. 1 concerned some five separate incidents, the last one of which was settled on February 2, 1960, just about four months before the instant claim arose. The record shows, without challenge by the Carrier, that in at least two of those settlements (ORT file No. 4 and ORT file No. 9) the claims also involved the relaying by radio-telephone of a train order by the Towerman at LeClaire to trainmen at Thermal No. 1, seemingly, no different than the instant claim involving Thermal No. 1. Yet, in each of those settlements the Carrier voluntarily paid each of the Claimants a full day's pay, thereby implicitly, if not explicitly, admitting violation of the agreement.

More importantly, the settlements concerning Thermal No. 1 all occurred under the same agreement as that of the instant claim and were consummated from time to time over a period of some seven years before this claim arose. Thus, the first of them took place about seven years before the incipience of this claim, three more arose in 1956 and were similarly settled in June, 1957, and at least one more occurred in September, 1958, being one of the claims among those settled in February, 1960, a short time before the subject claim came into being. So far as it appears none of these settlements was effected by the Carrier with the reservation that they be deemed "without prejudice" to it. On the contrary, the record indicates that they were the result of a going verbal understanding earlier reached by the Carrier's highest officer and the Organization's General Chairman that, at least as to Thermal No. 1, train orders would be handled exclusively by employes covered by the Organization's agreement.

The Carrier's basic argument is that at blind sidings "it is firmly established by long practice on the entire property of this Carrier for train crews to handle train orders." The series of its own settlements over such train orders at Thermal No. 1 seems hardly compatible with this practice. Rather, it supports the Organization's assertion that there was a mutual understanding governing this location or, as the General Chairman put it in his letter of July 25, 1960 to the Carrier, "Our craft does **not** make claim to the exclusive right to copy train orders **all over the system**, but as I have stated before and as the Carrier has conceded in the specific Files 2, 4 and 9, we **do** have **exclusive right** to copy train orders at certain locations, and Thermal No. 1 is definitely one of those locations." (Emphasis theirs.) And, in this connection, too, it is significant to observe that while the Carrier, in its ex parte submission to this Board, cites typical monthly figures of numerous train orders handled directly by train crews at some 16 blind sidings on its property, none is shown for Thermal No. 1 as such. In contrast, the figures relating to the station involved in the second claim herein points up the comparison between the two claims jointly presented in this dispute.

The second claim (item 2) involves the direct transmission of a train order by the Dispatcher to a member of the train crew at a blind siding known as Roxana. The engine in the incident had passed North Wood River Tower where an employe under the Telegraphers' Agreement is stationed. The Tower is some three miles distant from Roxana, but the engine had passed the Tower on a clear order board. It stopped one mile from the Tower and a member of the crew communicated with the Dispatcher for running orders. At first the Chief Dispatcher instructed the Trick Dispatcher to have the crew back up the train to the Tower for an order. But the Towerman (himself an employe covered by the Agreement) interrupted to advise that the train could not back up to the Tower because a Section Gang had two rails out of the main line. Accordingly, the Chief Dispatcher instructed the train crew

to proceed to Roxana, where it received the order in dispute directly from the Dispatcher.

In correspondence concerning this claim the General Chairman acknowledged that "The Organization does not deny that trainmen have copied orders at Roxana for years — but on this occasion they copied an order which amounts to work removal from the Towerman because the order concerned has been part and parcel of the normal work load at the Tower for many years past." But there is nothing in this record to show that the instruction to proceed to Roxana was given to evade the work jurisdiction or reduce the normal work load of the covered employe at the Tower. On the contrary, despite the ex post facto contention of the General Chairman that the train might have backed up near the Tower by using the Standard Oil Lead, it would seem that what was done was not only in entire good faith, but the exigent thing to do in the circumstances.

As to this claim, too, the Organization points to three prior voluntary settlements involving the by-passing of North Wood River Tower for the direct transmission of train orders at blind sidings in the vicinity. While these three claims (ORT File Nos. 5, 7 and 38) were also part of the voluntary settlement reached on February 2, 1960, none of the orders involved in those settled grievances were copied at Roxana. On the contrary, the record shows that Roxana is a station which has always been the frequent locus for the direct dispatch of train orders to the crews. Thus, in contrast to Thermal No. 1, the Carrier's figures show that, for example, in the month of May, 1960, one month before this claimed item arose, 41 train orders were copied by train crews at Roxana without a single claim being filed. Finally, the correspondence in the record referring to an earlier verbal understanding between the parties refers or relates only to the handling of train orders at Thermal No. 1.

While it is true that in many instances settlements on the property "are compromises and do not necessarily reflect the merits of the case" (Award 12383, Engelstein), there are cases where such prior adjustments do spell out supplemental understanding between the parties as to the basic application of the master agreement in given situations. E.g., Awards 10367 (McDermott), 4903 (Begley). It seems clear on this record that as to Thermal No. 1 the parties, by their consistent antecedent course of conduct, worked out such an understanding: train orders at Thermal No. 1 were to be handled exclusively, except for emergencies, by employes covered by the Organization's agreement. We hold, therefore, that the first claim (item 1) in this dispute be sustained. The same cannot be held for the second claim (item 2) for the reasons already indicated. Accordingly, we hold that this second claim be denied.

This leaves for consideration only the question of the remedy for the first claim. The Carrier, invoking Rule 7 of the Agreement, contends "that the proper compensation to be paid claimant is a call, and not a day's pay, as requested by the petition." But the record shows that in virtually all the past violations previously settled by the parties, the Carrier allowed the respective Claimants a full day's pay notwithstanding Rule 7. While this Board, in a previous blind siding case involving another carrier and an agreement containing a standard clause for handling train orders, restricted the monetary remedy to a call (e.g., Award 8687, supra), the subject agreement, as already indicated, has no such standard clause. It does contain Rule 19 (b) which provides in substance that extra employes called and not used "shall be allowed one day's pay." It may well be that this was the Rule applied by the Carrier in arriving at the amount of payment in the prior settlements.

In any event, it would seem that the amount voluntarily paid by the Carrier over the years in these prior settlements is the best gauge of the amount to be paid the named Claimant in the first claim set forth in this petition, and we so hold.

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 the Agreement was violated as stated in the opinion.

AWARD

Item 1 sustained in accordance with Opinion and Findings. Item 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August 1965.