Award No. 13948
Docket No. TE-13148

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers that J. Barlett, Extra Operator, be paid for eight hours for October 13, 1959, account Train Order No. 14 delivered to track car drivers at Sizerville by MofW Foreman. Foreman received Train Order No. 14 at "JN" Emporium, and took same to Sizerville in his automobile, delivering it to track car drivers at that location. Had he not delivered the order in this manner, crew at Sizerville would be unable to start work. The delivery of Train Order No. 14 by the MofW Foreman violated the scope of the Telegraphers' Agreement. Because of this violation, the Claimant is entitled to eight hours' pay as claimed.

EMPLOYES' STATEMENT OF FACTS: The facts in this case are fairly well stated by the following record of handling on the property. The District Chairman lodged the foregoing claim with the Superintendent–Personnel, who declined it, whereupon District Chairman Lagonia wrote him as follows:

"Emporium, Penna.
February 1, 1960

Mr. G. F. Daniels
Superintendent of Personnel
Buffalo, N. Y.

Dear Mr. Daniels:

On January 7, 1960 at our meeting in Buffalo we discussed Docket N-69(a). It was denied by you account similar claim at Keating Summit, Docket N-69, previously discussed and now being prepared for joint submission. I also asked that all similar claims at Keating Summit be held in abeyance pending decision on Doc. N-69.

I wish now to advise that your decision on Sizerville, N-69(a) is also rejected and that similar claims at this location also be held pending final decision. In this instance, as with the above Keating Summit, MofW foreman was instructed by train order to deliver said train order to track car drivers at Sizerville — a closed block station.

OPINION OF BOARD: The facts are not in dispute. On October 13, 1959, a Maintenance of Way Foreman picked up a train order at "JN" Block Station and delivered it to track car drivers in his gang at Sizerville. Telegraphers had been employed at the latter point until 1947, when it was closed as a block station and telegrapher jobs there were abolished.

The Employes allege delivery of the train order by other than a member of the Telegrapher class or craft was a violation of the Scope Rule of the effective Agreement.

The aforesaid Agreement contains no standard train order rule.

It appears that the Employes' position is based upon two basic contentions: (1) The work of delivering train orders in person to addressees is "inherently" work belonging exclusively to telegraphers; and (2) work of abolished positions may not properly be assigned for performance to employes of another craft.

The Carrier emphasizes (a) that there was no standard train order rule in effect; (b) the Scope Rule is general, and does not define work, but merely lists positions, so that there is no presumption of exclusivity; (c) that the Employes have failed to sustain the required burden of proof by a showing that personal delivery of "in care of" train orders on this property has been made by telegraphers.

The awards of this Board on the subject of personal delivery of train orders by telegraphers are in hopeless conflict. All that they show is that the concept of an industry-wide reservation of such work to the craft has been destroyed, and, along with it, the theory that telegraphers have an "inherent" and exclusive right to perform that service. See Award 12356. As a consequence, each of these disputes must now be considered and decided on an **ad hoc** basis.

After a review of those awards dealing specifically with the delivery of "in care of" train orders (Awards 7153, 9445 and 11908 are typical) the Board finds that an essential element of proof must be developed by the Employes to sustain a claim; namely, that telegraphers performed the work of delivering such orders to addressees as an established and customary practice. This is a question of fact to be determined by this Board solely on the basis of the material and relevant evidence in the record.

Here the Board is, in effect, asked to assume that because a Block Station manned by Telegraphers was once in operation at Sizerville, some 12 years prior to the time this dispute arose, all "in care of" train orders were personally delivered to addressees by those employed there. This is an assumption we are not prepared to make on the basis of the record in this case which is devoid of any supporting substantial evidence of probative value.

The Board finds no grounds for disagreement with the Employes' alternative argument that, as a general proposition, work reserved to a class or craft of employes may not properly be performed by others as the result of the abolishment of covered positions, except by agreement. Here, however, as indicated above, there has been no proof that the specific work in dispute was exclusively performed by Telegraphers while employed at Sizerville.

In the light of the foregoing, this Claim will be denied.

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 of the parties was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of November 1965.