

Award No. 13972
Docket No. TE-13011

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

UNION PACIFIC RAILROAD COMPANY (Eastern District)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (Eastern District), that:

1. Carrier violated the Agreement between the parties when on September 15, September 28, September 30, and October 5, 1960, it required or permitted Mr. Felber, a train service employe, not covered by the Agreement, to handle train orders at MP 11.38.

2. Because of these violations Carrier shall compensate B. E. McEnulty, who was idle on one of his rest days on September 15, September 28, and October 5, 1960, in the amount of a day's pay of eight (8) hours at the time and one-half rate for each of such days; and Carrier shall compensate G. H. Ligon, who was idle on one of his rest days on September 30, 1960, in the amount of a day's pay of eight (8) hours at the time and one-half rate.

EMPLOYEES' STATEMENT OF FACTS: The agreement between the parties, effective February 1, 1951, with its supplements, is available to your Board, and by this reference is made a part hereof as though set out word for word.

The claims herein arose from Carrier's action of requiring or permitting Conductor Felber, in charge of work train, to handle train orders at Mile Post 11.38 on September 15, 28, 30 and October 5, 1960. Mile Post (abbreviation "MP" is located on the Kansas Division of the Railroad, 11.38 miles west of Kansas City, Missouri, Union Station, on the line between Kansas City and Salina, Kansas, which Carrier identifies as the First Subdivision of the Kansas Division. Double track extends from Kansas City Union Station to Topeka, Kansas, a distance of 68 miles. MP 11.38 is within this double

with The Order of Railroad Telegraphers on the Eastern District and they should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Conductor Felber, assigned to a work train crew building a bridge at MP 11.38, and who was not covered by Employees' Agreement, copied train orders at MP 11.38 where a telephone connecting through the Kansas City switchboard to the train dispatcher (among others) had been installed in a box car primarily for the use of the work crew. No telegraph or telephone office had ever been established at MP 11.38. The claim before us grew out of four separate claims filed on the property that on four specified days over a three week period Felber had copied six train orders.

The key dispute in this case was made clear on the property in a letter from Carrier's Assignment to Vice President Singent to Employees' General Chairman Dent on November 30, 1960 and in Mr. Dent's reply dated February 23, 1961. In Mr. Singent's letter he included in his explanation for Carrier's declining of the claims: "... it has never been considered a violation of either the Scope Rule or the Train Order rule when employees other than telegraphers copy train orders at a location where telegraphers are not employed.", and he then cited several awards in connection with the point. General Chairman Dent's reply noted that Mr. Singent had argued that (among other things) "practice" and prior awards justified Carrier's denial of the claims, and attempted to answer those arguments with a discussion of the awards (in some of which practice was decisive to the outcome) and by citing other awards.

Employees contend "it is a well established and universally accepted fact" that the Agreement reserves to them exclusively all the work of handling train orders, except as otherwise specified in Rule 64, the Train Order Rule in this Agreement. Carrier contends that the Agreement reserves to the Employees only such train order work as can be proved by evidence of tradition, custom and practice was intended to be exclusively Employees'.

Employees argue in addition, that the performance of the involved work by Conductor Felber had the effect of establishing a telephone or telegraph office at MP 11.38, thus clearly bringing the work under the prohibition of Rule 64. We reject this argument: in order even to state the argument for consideration, Employees had to assume that the involved work belongs exclusively to the Employees, and that is the very argument we are seeking to resolve.

Examination of the awards cited by both parties shows that this Board has not consistently found it to be "a well established and universally accepted fact" that all handling of train orders belongs exclusively to Employees under this or under other agreements with similar scope and train order rules; on the contrary, it appears that the findings in each case depend on the particular circumstances and evidence in each record.

The Scope Rule in this Agreement is a general scope rule which does not by its terms explicitly reserve any particular work to the Employees. We have repeatedly held that with such a rule evidence of practice, tradition or custom is needed to show just what work the parties intended to reserve under the particular agreement. The initial burden of supplying such evidence

in this case was the Employees'. They asserted that the involved work belonged to them traditionally, but they failed to supply adequate evidence to support that assertion. Thus on the basis of the evidence in this record we cannot find that the work here involved belonged exclusively to the Employees.

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 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 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 22nd day of November 1965.