Award No. 15795
Docket No. TE-14286

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

SOUTHERN PACIFIC COMPANY
(Pacific Lines)

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

CLAIM NO. 1

1. Carrier violated Rules 1, 2, 14, 17 and 29 of the parties' Agreement when on June 8, 15 (twice) at Livingston, California, 20, at Delhi, California, 22, between Merced and Turlock, California, 29 "On Line" and July 6, 1962, at Delhi, California, it required or permitted employes not covered by said Agreement to handle (deliver) train orders.

2. Carrier shall, because of the violations set out in paragraph one hereof, compensate the following employes, idel on their respective rest day or days, a day's pay at the time and one-half rate for the date or dates indicated:

W. N. Walden – June 8 and 15, 1962
R. V. Hall – June 20, 1962
C. H. Closs – June 29, 1962
D. E. Marcus – June 15, 1962
C. C. Jolly – June 22, 1962
L. B. Hawks – July 6, 1962

3. In the event one or more of the above claimants are not available because of working or being absent on such date or dates, payment shall accrue to the next senior qualified regularly assigned telegrapher idle on his rest day or days.

CLAIM NO. 2

1. Carrier violated Rules 1, 2, 14, 17 and 29 of the parties' Agreement when on August 5, 1962, at Centerville, California, on

August 13, 1962, at Lingard, California, and at Notarb, California, on August 20, 1962, at Ceres, California, and on August 27, 1962, at Ripon and at Covell, California, it required or permitted Trainmasters, employes not covered by said Agreement, to handle (deliver) train orders.

2. Carrier shall, because of the violations set out in paragraph one hereof, compensate the following employes, idle on their respective rest day or days, a day's pay at the time and one-half rate for the date or dates indicated.

V. Iness – August 5, 1962
M. A. Lane – August 27, 1962
C. G. Vogt – August 13, 20 and 27, 1962

3. In the event one or more of the above claimants are not available because of working or being absent on such date or dates, payment shall accrue to the next senior qualified regularly assigned telegrapher idle on his rest day or days.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective December 1, 1944 (reprinted March 1, 1951, including revisions) and as otherwise amended. Copies of said Agreement are, under law, shown to be on file with your Board and are by this reference, made a part hereof.

Claims handled separately on the property, involving identical issues, under the same Agreement rules have been incorporated into this appeal. As stated in Award 11174 (Dolnick):

"The National Agreement of August 21, 1954, sets out the procedures and time limitations for the presentation and the processing of such grievances. There is nothing in that Agreement which prohibits an employe from merging several claims between the same parties, arising out of the same agreement and involving identical issues, providing each of the claims are presented within the time limits provided in Section 1 (a) of Article V thereof, and provided that the claims are presented in accordance with other provisions of that Agreement."

Therefore, on the authority of your Board as enunciated by Award 11174, and others (Awards 10619, 11120, 481) claims, handled separately on the property are incorporated into this appeal.

CLAIM NO. 1

On June 8, 15 (twice on this date), 20, 22, 29 and July 6, 1962, Carrier required or permitted Train masters, a Cashier, a Clerk, et al, none of whom was covered by the parties' Agreement, to deliver train orders at station locations where employes covered by the parties' Agreement were formerly employed, and at station locations and/or train station locations where no employe under the parties' Agreement had ever been employed.

Incorporated into the District Chairman's letter (See ORT Exhibit 1 — Claim No. 1) instituting this claim are reproductions of the various train orders in question which are, by this reference, made a part hereof.

OPINION OF BOARD: The issue in this case is whether a person not covered by the Agreement may deliver train orders which were copied by a Telegrapher to a place where no Telegrapher is employed. Employes argue that the work of **delivering** train orders is part of the work of **handling** train orders and that all handling of train orders is work reserved to the Employes under the Scope Rule of the Agreement; Employes also argue that Carrier by handling train orders there, established train order offices at each place to which the involved train orders were delivered and, in violation of Rule 2 of the Agreement, failed to fill the positions at such offices with the proper employes covered by the Agreement; and that, since offices where telegraphers should have been employed were the delivery points of the train orders involved, Rule 29(a) was applicable and was violated.

Carrier argues that the Scope Rule in this Agreement is, as was found in our Award 10492 (Dugan) between the same parties, general in nature, requiring proof by Employes that any specific work belongs to them under it. Carrier also argues that the additions to Rule 29 made after we made our Award 1096 (Sharfman) between the same parties taken together with our findings in that Award, show that the parties did not intend to cover delivery of train orders to locations at which no telegrapher is employed as belonging exclusively to Employes. Rule 29, at the time involved in Award 1096, included only what, except for changes in terminology which are irrelevant to the problem here, subsequently became Section (a) of Rule 29 of the currently involved Agreement. In Award 1096 we found that under Rule 29 handling of train orders at locations where a telegrapher is employed belonged to Employes and train dispatchers in spite of a conflicting Carrier rule. Subsequently, with the substance of the provision dealing with **handling** train orders at such locations retained as Section (a), the parties added to Rule 29 as Section (c) a provision dealing with the **copying** of train orders at locations where no telegrapher is employed; no provision dealing with **delivering** train orders at locations where no telegrapher is employed is in Rule 29. Thus, according to the Carrier, no part of Rule 29 applies to the current case, and, since, practice does not show that delivering of train orders to locations where no telegrapher is employed is reserved by the Scope Rule, the Claim should be denied.

The keystone question is whether the involved work belongs to the Employes under the Scope Rule: unless a positive answer to this question is proved by the Employes, the other arguments of the Employes fall, as each rests on it. Employes' proof relating to this issue is constructed entirely on citation of our awards in previous cases. According to the Employes, the "principle" they quote from our Award 2817 (Shake) between the same parties as here:

> "When the activity is such as is ordinarily performed by Telegraphers while employed on Telegraphers' positions, it must be considered under the Agreement.",

together with the "fact," which the Employes claim cannot be successfully controverted, that handling (receiving, copying and delivering) train orders is "part and parcel" of such activity, lead to the conclusion that delivering train orders to places where no Telegrapher is employed is reserved to Employes. Employes also cited to support their position Awards 5992 (Jasper) and 12852 (Coburn), each between the same parties as here involved:

Award 2817 did not involve delivery of train orders, but involved the use of a telephone by the conductor of a work train operating out of a blind

siding to obtain information from the Dispatcher's Office as to the location of other trains and to receive, repeat and copy train orders. Our decisions in that case was based on the particular facts in that case; we said:

> "The facts of this case do not present a situation of chance calls or of a crew becoming 'dead' at a blind siding because of lack of orders. The record discloses that nightly headquarters was established for the work train at Nunez and that during the period involved, short as it was, the conductor received six train orders and three daily lineups, besides using the telephone several times each day to ascertain when certain trains might be expected to arrive. This, we are constrained to hold, characterizes the conductor's use of the telephone as Telegrapher's work . . . "

It is clear from the foregoing that the award was based on the findings quoted above, and that the "principle" cited by the Employes from this award was dicta.

Delivery of train orders was not involved in the case decided by Award 5992. There we found that the copying of train orders at a location where no telegrapher was maintained was work reserved to the Employes under the Scope Rule. Carrier's argument there that Rule 29 was controlling was rejected by the Referee who said:

> "Rule 29 is not a grant of work to employes coming under the Agreement. It is a restriction and limitation on the Carrier expressly set out and in modification of the Scope Rule."

However, Award 1096, cited above, found, in effect, that handling train orders at stations where telegraphers are employed is reserved for the Employes under Rule 29 without reference to the Scope Rule; we said there:

> "This claim does not arise . . . under the scope rule of the Agreement . . . ; it is submitted under Rule 29 . . . "

and other of our awards have found that the standard train order rule (Rule 29 here) is a special rule which, among other things, modifies the Scope Rule by granting the specific work described in its Section (a) to the Employes under the circumstances and exceptions spelled out. We believe that Rule 29 is most correctly read as, among other things, reserving to the Employes the work described in Section (a), in the specifically limited fashion clearly stated in the Rule, and that, as a special rule, it modifies, elaborates and, where necessary, takes precedence over the Scope Rule which is not specific in its reservation of work.

Award 12852 did deal with delivering train orders; in that case we found a violation of Rule 29(a), as claimed by Employes, where train orders formerly delivered by Telegraphers to crews at the telegraph office at Stockton, were delivered by persons not covered by the Agreement to the crews at a yard office at Stockton which was two miles from the telegraph office where they had been received and copied by Telegraphers. Referee Coburn wrote in that case:

> ". . . where, as here, the standard train order rule is in effect, the weight of authority clearly supports the right of employes covered

by the Telegraphers' Agreement in handling train orders to receive, copy, prepare and deliver them to the crews addressed."

Although he did not discuss it explicitly, the Referee in that case in sustaining the claim of violation of Rule 29(a), appears to have accepted as fact the statement in Employes' Submission about the receipt, copying and delivering of the involved train orders:

"All this occurs at Stockton, a station where operators are employed, it is covered by the provisions of Rule 29, particularly Section (a), and entitles an operator to a minimum call payment."

There was no argument in that case, as there is in this one, that the delivery of train orders to a location where no telegraphers are employed ipso facto establishes a telegraph office at that location; Rule 29(a) could be found applicable in Award 12852 only on the basis that the bounds of the telegraph office at Stockton included the yard office at that location. Thus, Award 12852 is not precisely in point on any of Employes' arguments in this case.

Here Rule 29 makes clear, what, absent other evidence to enlighten us, is not clear simply from the text of the Scope Rule: Section (a) of Rule 29 provides that **all** handling (receiving, copying, preparing and delivering) **at offices where an operator is employed** belongs to employes covered by the Agreement, with only those exceptions specified in the Section; Section (c) provides that, with specified exceptions, if **at a location where no operator is employed** a train order or other message of record is **copied** by persons other than those covered by the Agreement, specified telegraphers are to be paid a day's pay. Of all the operations covered by the term "handling" of train orders, Section (c) specifies only copying, indicating not only that the day's pay was intended only in instances of copying of train orders under the circumstances described in the Section, but that the parties intended to deal differently with other operations of handling at locations where no operator is employed that at locations where an operator is employed, and no inference that the Scope Rule covers **all** handling at locations described in Section (c) can be drawn, although such coverage by the Scope Rule is clearly contemplated in Section (a) at the locations described in that Section. That the parties intended to treat some of the operations involved in "handling" differently from each other in some circumstances is further evidenced by the different treatment of all operations of handling in Section (a) and of copying in Section (c) in cases of emergency. Clearly, some of the various operations involved in handling train orders were considered by the parties as separable from the others rather than inseparable as argued by Employes in this case.

Thus we return to the fact that the Scope Rule here is general. In this case it was incumbent on the Employes to prove that **delivering** train orders **to locations where no operator is maintained** is work reserved to the Employes. None of the cases cited decided this precise question on this property, or dealt with facts like those here involved. The Employes have failed to sustain their burden of proof in this case.

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 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 19th day of September 1967.

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