

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

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

TOLEDO, PEORIA & WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Toledo, Peoria & Western Railroad, that:

CLAIM NO. 1

1. Carrier violated the terms of an Agreement between the parties hereto, when on August 10, 1963 it required or permitted L. A. Engel, operator-clerk, Effner-Sheldon, Illinois to leave train orders and clearance card unattended on the train register at Effner to be picked up by crew of No. 25 outside of his tour of duty.

2. Carrier shall, because of the violation set out in paragraph one hereof, compensate L. A. Engel for a three (3) hour call at the straight time rate of the position occupied.

CLAIM NO. 2

1. Carrier violated the terms of an Agreement between the parties hereto when on September 16 and 23, 1963 it required or permitted J. W. Kennedy, relief operator-clerk, Fairbury, Illinois to leave train orders and clearance cards in register box at Fairbury, Illinois to be picked up by crews of trains addressed outside his tour of duty.

2. Carrier shall, because of the violations set out in paragraph one hereof, compensate J. W. Kennedy for a three (3) hour call at the straight time rate of the position occupied for each of the dates involved in the claim.

CLAIM NO. 3

1. Carrier violated the terms of an Agreement between the parties hereto when on October 9, 1963 it required or permitted W. D. Carter, agent Elvaston, Illinois to leave train orders and clearance card on the register at Elvaston, Illinois, to be picked up by crew of train addressed after the station was closed.

2. Carrier shall, because of the violation set out in paragraph one hereof, compensate W. D. Carter for a two (2) hour call at the time and one-half rate of the position occupied.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the Toledo, Peoria & Western Railroad, hereinafter referred to as Carrier, and all that class of employes, hereinafter referred to as Employees, represented by The Order of Railroad Telegraphers, hereinafter referred to as Organization, effective April 29, 1947, revised to September 30, 1953, and as otherwise amended. These Agreements are available to your Board, and are, by this reference, made a part hereof.

At page 22 of said Agreement under Rule 24, Rates of Pay, are listed the positions covered by the Agreement in accordance with their location, position classification and base rate of pay attached to the position. The listings pertinent here are as follows:

Location	Occupation	Base Rate
Effner-Sheldon	Operator-Clerk	\$ 1.735
Sheldon	Agent	375.67
Fairbury	Agent	398.67
Fairbury	Operator-Clerk	1.687
Elvaston	Agent-Operator	343.67

The listings of positions covered by the Agreement establishes: 1) That the work of the positions is covered by the Agreement. 2) That the rates of pay attached to the positions are negotiated rates of pay. 3) That the rates of pay are predicated upon the class of work assigned to and performed by the occupants of the position. 4) That the class of work assigned to the positions, which is the manifestation of the position, was in conformance with the work of the class and craft.

Each of the claims, there are three (3) separate actions, incorporated into this appeal, were handled separately on the property. The National Agreement of August 21, 1954 sets out the procedures and time limitations for the presentation and the processing of claims and grievances. There is nothing in this Agreement which prohibits the Organization from merging claims between the same parties, arising out of the same Agreement and involving the same issues, provided each of the claims is presented within the time limitations prescribed by said Agreement, and provided that the claims are presented in accordance with other provisions of the Agreement. This procedure has been approved by your honorable Board in Awards 11300 (Moore), 11174, 11120 (Dolnick), 10619 (LaBelle) and 4821 (Carter), among others.

CLAIM NO. 1

The relevant facts in this case are simple and undisputed. L. A. Engel, hereinafter referred to as Claimant, was the regular occupant of the second shift operator-clerk's position at Sheldon, Illinois on the date involved in this claim. His assigned hours were 4:00 P. M.-12:00 Midnight. Work week, Thursday through Monday, rest days Tuesday and Wednesday.

The issue here, as it is in all of the claims incorporated herein, is the right of Claimant under the rules of the Agreement to handle (receive, copy and deliver) train orders to the train crews which are to execute them.

September 23rd J. W. Kennedy, working same hours as above received orders and clearance for Wabash Ex 469 at 9:40 P. M. and went off duty at 10:00 P. M. placing them in register box. Wabash Extra 469 arrived Fairbury 10:36 P. M. Crew picked up orders and clearance from register box after Operator-Clerk Kennedy had gone off duty.

CLAIM NO. 3

Agent W. D. Carter was regularly assigned at Elvaston Agency with hours on duty of 7:30 A. M. to 4:30 P. M. On October 9, 1963 Mr. Carter was held on duty until 8:10 P. M. account late Wabash Extra West. He received clearance and orders for Wabash Extra West at 8:03 P. M. and was released by the Dispatcher at 8:10 P. M. Orders were left on train register for pick up by Wabash Crew.

Wabash Extra West arrived Elvaston at 10:30 P. M. Crew picked up orders and clearance from train register after Agent Carter had gone off duty.

Carrier does not dispute the facts on which claims are based. Operator-Clerks and/or Agent, claimants in the disputed claims did leave orders and clearance in the train register and/or in register box after going off duty and prior to arrival of the trains involved. These orders and clearances were received by operators and/or agents while on duty and when going off duty they were instructed or permitted to leave them in register or register box for subsequent pick up by crews addressed.

OPINION OF BOARD: This Board is called upon again to deviate from an almost unanimous line of prior awards which hold that the word "handling" as it appears in the "train order rule" contemplates **personal delivery** of such train orders to the crews which are to execute them. There is no valid basis for doing so, and the claims herein should be sustained. Award 11653.

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 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 violated by the Carrier.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of September 1968.

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