

Award No. 17261

Docket No. TE-16605

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(SUPPLEMENTAL)**

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
UNION PACIFIC RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Union Pacific Railroad (Northwestern District), that:

1. Carrier violated the Agreement between the parties hereto when on March 30, 1965, it required or permitted Conductor Richards, an employee not covered by the parties' Agreement, to receive, copy and deliver train order No. 370 at Starbuck, Washington, over the telephone from the train dispatcher.
2. Carrier shall, because of the violation set forth in paragraph 1 hereof, compensate C. L. Greenway, extra telegrapher, who was first out on the Spokane Extra Board, and available to perform the work, eight (8) hours at the pro rata rate of the former agent-telegrapher position at Starbuck, Washington at the current rate applicable to the position as temporarily reestablished.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the Union Pacific Railroad Company (South Central and Northwestern Districts), hereinafter referred to as Carrier, and its employees in the classes shown therein, represented by the Transportation-Communication Employees Union (formerly The Order of Railroad Telegraphers), hereinafter referred to as Employees and/or Union, effective October 1, 1959, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

At page 9 of said Agreement, under Rule 3, and under the caption "Home Seniority District No. 6," is listed the position in effect at Starbuck, Washington on the effective date of said Agreement. For ready reference the listing reads:

Starbuck—Agent-telegrapher—\$2.322.

The above listing of the agent-telegrapher's position at Starbuck, Washington establishes that at this location, prior to the abolishment of the position on September 29, 1961, Carrier maintained communication service employees who pursuant to the provisions of Rule 63 (Train Orders) handled (received, copied and delivered) train orders issued by the train dispatcher addressed to trains arriving, departing or passing this station. When the need arose, as it did in this claim, that train orders be issued to trains at this station, it was Carrier's obligation to reestablish the

emergency, in which case the telegrapher will be paid for the call."

Under date of May 25, 1965, the Organization, through its Local Chairman, filed a claim on behalf of the Claimant C. L. Greenway for eight hours' pay, because of this action. (Copy of Local Chairman McGarry's letter of May 25, 1965 is attached hereto as Carrier's Exhibit "A.")

By letter dated June 15, 1965 (Carrier's Exhibit "B"), Supervisor of Wage Schedules E. O. Morlok declined the claim.

Further handling of this dispute on the property is indicated as follows:

CARRIER'S EXHIBIT

C—Letter of appeal to Assistant to Vice President N. B. Beckley (the highest officer designated by the Carrier to whom appeals may be taken) from Acting General Chairman H. L. Carraway, dated October 6, 1965.

D—Mr. Beckley's reply to the above appeal, dated November 30, 1965.

E—General Chairman Herrera's letter of December 4, 1965 advising that the claim would be further progressed; however, requesting conference discussion of dispute prior to such action.

F—Mr. Beckley's letter dated February 14, 1966, following conference discussion held January 31, 1966, reaffirming previous denials of claim.

At the time the Local Chairman of the Organization originally filed the claim with the Carrier, he cited Rule 1 (Scope), Rule 3 (Hourly Rated Positions)—from which Starbuck was deleted upon closing of that station effective September 29, 1961, Rule 6 (New Positions), Rule 10 (Daily Guarantee), Rule 20 (Basic Day), Rule 53 (Extra Boards), Rule 56 (Time Limit on Claims), and Rule 63 (Train Orders). On appeal to Mr. Beckley, the Organization cited Rule 9 (Rate of Pay—Extra Employees) and Rules 10, 20, 53 and 63 as having been violated by the Carrier. While each of these cited rules of the Agreement were discussed as to their applicability to this dispute, main reliance was upon Rule 63, quoted above. (Exhibits not reproduced.)

OPINION OF BOARD: The record shows that prior to September 29, 1961, Starbuck, Washington, was an open telegraph station, with an employe working under the scope of the Agreement classified as Agent-Telegrapher. On September 29, 1961, the station was closed, since which time Starbuck has been what is commonly referred to as a "blind" or closed station.

The claim herein arose because on the date involved, March 30, 1965, at about 4:57 P.M., the Conductor in charge of Work Extra 122, on arrival at Starbuck, contacted the Train Dispatcher by telephone from a telephone booth at this location, to ascertain whether it would be permissible to move his train from that location to Ayer, Washington, against

opposing trains scheduled to operate in this territory. The Train Dispatcher then issued Train Order No. 370, which was copied by the Conductor at Starbuck. The Petitioner says that the Conductor in charge of the Work Extra "went into the station at Starbuck, Washington and there handled (received, copied and delivered) Train Order No. 370, * * *." In response thereto the Carrier states that on March 30, 1965, the date of the claim, there was no station building at Starbuck, Washington, same having been cleared from the premises on February 24, 1965, and that the only facility at this location was a telephone booth similar to installations at many other blind sidings on the property.

The Petitioner relies primarily upon the Scope Rule of the Agreement and Award 8867 of this Division. Rule 63, the so-called standard train order rule, is also referred to in the record.

So far as Rule 63 is concerned, it is, by its own language, applicable only "at telegraph or telephone offices where an operator is employed and is available or can be promptly located, * * *." It has no application to the situation at Starbuck.

The Scope Rule of the Agreement is general in character in that it lists positions covered and does not delineate work. Our more recent, and in our opinion, better reasoned Awards have held that where the Scope Rule is general it is incumbent upon the Organization to prove that by history, custom and practice the work claimed is reserved exclusively to employes covered by the Agreement. See Awards 14936 and 6071 involving the same Petitioner and other districts of the same Carrier, among many other Awards. In our present docket the Petitioner has not proved that the handling of train orders at locations where telegraphers are not employed is work reserved exclusively to employes covered by the Agreement.

While we do not agree with the logic of Award 8867, suffice it to say that the situation there involved was different from the situation in our present docket, as in the dispute covered by Award 8867, the Board in effect found that the position at Page, Washington, had not been permanently abolished. The position at Starbuck was permanently abolished on September 29, 1961, about three and one-half years prior to the occurrence giving rise to the claim. We do not agree that the handling of the train order at Starbuck by the Conductor obligated the Carrier to "reestablish the train order position, or failing to do so compensate the employee entitled to the performance of the train order work in the same manner as if he had performed the work." The situation at Starbuck was the same as at any other location where operators are not employed.

The 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 was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1969.