

Award No. 18436
Docket No. TE-18638

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation Division, BRAC, on the Illinois Central Railroad, TC-5702, that:

1. Carrier violates the Agreement between the parties when it continuously requires and permits the delivery of train orders from Glen Tower, Glen Carbon, Illinois to Mont, Illinois where the Terminal Trainmasters, Illinois Central Trainmasters and other employees not covered by the Telegraphers' Agreement deliver these train orders to the Illinois Terminal Trains for movement of said trains according to the instructions contained therein.

2. Carrier shall compensate the senior idle operator, extra in preference, for a day's pay at the minimum rate of pay on that district or division, for said violations occurring continuously and specifically in violation of Rule 1, the Scope, and Rule 4, Handling of Train Orders. This claim is to commence sixty (60) days prior to November 29, 1968 and will continue each day thereafter until said violations cease.

EMPLOYEES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The dispute involved herein is based on provisions of the collective bargaining Agreement, as amended and supplemented, between the Parties effective June 1, 1951. The claim was handled on the property in the usual manner up to and including conferences with the highest officer designated by the Carrier to handle such claims, where it was discussed on June 11, August 26 and 27, 1969.

The claim was instituted because employees of the Illinois Terminal Railroad Company are picking up train orders and clearance cards at an open telegraph station, carrying (messengering) them to a location where telegraphers are no longer employed and are delivering them to crews of the trains addressed.

It is the employees' contention that the handling of train orders includes the receiving, the copying and the delivering by telegraphers, that such work

Train orders and clearance cards governing movement of Illinois Terminal trains are prepared by an operator located at Glen Tower, 3.7 miles south of Mont. The Glen Tower operator is an employee of the Chicago and North Western Railroad; that is, he is employed, paid, and directed by the C&NW and is governed by the C&NW telegraphers' agreement. In exchange for the C&NW operators' services, the Illinois Central pays a portion of the Glen Tower operation expenses. After the train orders and clearance cards have been copied and prepared by the C&NW operator for the IT trains, they are picked up by an Illinois Terminal employee; that is, a person who is employed, paid, and directed by the Illinois Terminal, who delivers them to the IT crew addressed on IT tracks near Mont. Incidentally, in the statement of claim the union asserts that "* * * Illinois Central Trainmasters * * * deliver these orders to the Illinois Terminal Trains * * *" However, the union's assertion is in error for neither Illinois Central trainmasters nor any other IC employees handle the train orders in question; rather the orders are copied by a C&NW employee and delivered by IT employees.

The union has filed claims against the Illinois Central alleging that the manner in which Chicago and North Western and Illinois Terminal employees deliver train orders to IT crews on IT tracks near Mont, Illinois, is in violation of the Illinois Central telegraphers' agreement. It is these claims which are before the Board for adjudication.

OPINION OF BOARD: Since September 1968, trains of the Illinois Terminal Railroad have operated northbound over the Carrier's tracks between Mont, Illinois, and Springfield, Illinois. At Mont, Illinois Terminal trains leave their company's tracks and enter upon a siding of the Carrier from which entrance to Carrier's main line to Springfield is made. Before an Illinois Terminal train can enter upon and operate over Carrier's tracks between these points, it must receive and adhere to train orders originated by the Carrier. The claim herein concerns the handling of those train orders.

Train orders for the Illinois Terminal trains are handled basically in the same manner as are the orders addressed to Carrier's northbound trains using this portion of track. A dispatcher of Carrier transmits the orders to a telegrapher at Glen Tower, located 3.7 miles south of Mont. Glen Tower is an around-the-clock telegraph office located upon the property and manned by employees of Chicago and North Western Railroad. Telegraphers at Glen Tower perform joint service for Carrier, Chicago and North Western Railroad and Norfolk and Western Railroad, all of whom share the expense of operating the tower and compensating telegraphers on duty there. The telegrapher at Glen Tower receives and copies the train orders addressed to the Illinois Terminal train crews and then, since, unlike Carrier's northbound trains, Illinois Terminal trains do not pass Glen Tower, he turns them over to others who are not telegraphers for delivery to the train crews who will execute the orders. (There is a factual dispute concerning whether physical delivery of the train orders to the train crews is made by employees of Carrier or Illinois Terminal, or both, but we find that a resolution of this dispute is not necessary to the disposition of the central issues raised by the claim herein.)

The substance of the instant claim is that Carrier violates the Agreement by allowing the physical delivery of its train orders to Illinois Terminal train crews to be performed by employees not covered by Telegraphers' Agreement. The Organization relies on its Scope Rule and Train Order Rule to support the claims herein:

"Scope

A. For positions held by [enumeration of traditional classifications covered by Telegrapher's Agreements] the following rates of pay, rules of overtime and working conditions will apply. * * *

Handling Train Orders

A. No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call."

The threshold issue herein is whether the physical delivery of train orders to the train crews who will execute them is encompassed by the term "handle" as it appears in the Train Order Rule. This precise issue has been before this Board many times but, as Referee Dolnick observed in Award No. 12371, there is considerable conflict in the decisions of the Board on the subject. In that Award, Referee Dolnick made a comprehensive review and analysis of decisions dealing with the issue and rendered a well-reasoned determination which in our view correctly resolves the question. We adopt the findings of Award No. 12371 and hold that the physical delivery of train orders to the train crews who will execute them is an integral part of the work reserved to telegraphers under their Agreement and may not be assigned to employes not covered by that Agreement.

The issue next to be considered stems from Carrier's additional defense to the claim herein that Carrier cannot be held accountable for conduct occurring on foreign line property under the control of foreign line management. We have been referred to several Awards involving situations where work performed by employes of one carrier was protested and claimed by employes of another carrier, and to several other Awards in which the activities of a joint agency were at issue. We find, however, that the facts of each of these prior Awards are distinguishable. None of them presents the precise coalescence of factual ingredients which obtain herein, the significant features of which we perceive to be as follows:

1. While the telegraphers employed at Glen Tower are carried on rosters of the Chicago and North Western Railroad, it does not appear that Carrier is totally devoid of all right to control the manner in which its business is handled at Glen Tower. As noted above, Carrier shares equally with the other lines the expense of operating the facility, which includes the compensation of the telegraphers. Additionally, Glen Tower personnel use, presumably by direction of Carrier, Train Order and Clearance Card forms of Carrier for all movements over Carrier's tracks which entail communication through Glen Tower. Finally, the arrangement by which the train orders involved herein are delivered to the Illinois Terminal train crews must have been prescribed by Carrier, since Chicago and North Western management would have no way of knowing where or how to deliver them without advice and instruction from Carrier.

2. In handling the train orders involved herein, the telegraphers at Glen Tower are an indispensable connective link in the operations of Carrier. They receive train orders originated by Carrier which are intended to regulate the movement of trains over Carrier's tracks.

3. When Glen Tower was established as a joint agency, Illinois Terminal trains did not operate over the tracks of Carrier and, accordingly, the train orders involved herein were non-existent. Indeed, the record does not indicate that during the many years that it has operated as a joint facility Glen Tower was ever used to handle Carrier's orders for trains which did not pass Glen Tower. The Organization's acquiescence in the arrangement whereby all of Carrier's business at Glen Tower was handled by a foreign line employe who was covered by a Telegrapher's Agreement cannot be taken as consent to allowing Carrier to cause its train orders to be partially handled by persons not covered by a Telegraphers' Agreement.

In summary, we hold that the actual physical delivery of train orders to the train crews who will execute them is work reserved to telegraphers; that under the circumstances of this case Carrier had the obligation and power to control the manner in which its train orders were handled; and, Carrier violated the Agreement by causing its train orders to be handled in a manner at variance with that prescribed by the Agreement.

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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March 1971.