

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19602  
Docket Number TE-19433

Robert M. O'Brien, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,  
(Freight Handlers, Express and Station Employees  
(Formerly Transportation-Communication Division, BRAC)

PARTIES TO DISPUTE: (

(Western Maryland Railway Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Western Maryland Railway Company, T-C 5812, that:

1. Carrier violated the Agreement between the parties when on December 5 and 13, 1969, and subsequent dates it required or permitted other employees to handle, copy train orders, or other messages of record governing the movement of trains at Laurel Bank and Elkins when no emergency existed.

2. Carrier shall, as a result, compensate the minimum basic day to the head out Extra man on the extra list for each date of occurrence.

CARRIER DOCKET: W-45

OPINION OF BOARD: Prior to November 16, 1969 all movements of trains over Carrier's G. C. and E. Durbin and Belington Subdivisions were authorized by train orders handled by the Operators, members of the T-C Division BRAC, at Laurel Bank and Elkins. On November 16, 1969 as a result of Carrier's General Orders it was stipulated that train movements on these sub-divisions would be made by oral permission received directly by the train crew from the Train Dispatcher. With this change the Carrier later abolished the last remaining telegrapher position at Laurel Bank. However, on the claim dates Operators were employed at both Elkins and Laurel Bank.

The claim arose when Carrier required train crews to use the telephone to receive block authorizations and to report clear at Laurel Bank and Elkins, W. Va. from the train dispatcher at Cumberland, Md. The Organization maintains that when Carrier required train crews to handle the above train orders it violated both the Scope Rule and the Agreement of February 19, 1957. The Organization argues that the instructions given to a crew to proceed to a block are, in fact, train orders, and since such orders must be copied and reduced to writing account Rule 115 of Carrier's Book of Operating Rules said handling of these train orders should have been performed by Operators.

Carrier contends that neither the Scope Rule nor the February 19, 1957 Agreement were violated. The Scope Rule, says Carrier, is general in nature and the Organization has failed to prove through past practice, traditions, and custom that the work in question has been performed by Telegraphers to the exclusion of all others. Furthermore, before the February 19, 1957 Agreement has been violated, the Organization must prove that the communication was a train order or other message of record, governing the movement of trains, and it must be copied by persons other than a Telegrapher or Train Dispatcher. Carrier argues that none of these conditions precedent were met. Rather the Dispatcher gave the train crews oral authority to operate on a secondary track in full compliance with its Book of Operating Rules.

This Board is of the opinion that the Organization has failed to prove a violation of the applicable Scope Rule. Awards No. 7400, 7401 and 7402, involving the same parties herein (Order of Railroad Telegraphers and Carrier herein) make it obvious that Telegraphers do not possess exclusive right to communicate train orders via the telephone. Those Awards held it did not violate the Organization's rights for train crews to receive and copy train orders from a Dispatcher by utilizing a telephone. Nor do we feel the record proves a grant of exclusivity based on past practice, custom, and tradition. The record is lacking in evidence to that effect.

Nor do we find that the February 19, 1957 Agreement was violated. Award No. 1 of Public Law Board No. 453, involving the identical parties herein, held that said Agreement confined the jurisdiction of the Organization to messages of record that governed the movements of trains which were copied. Carrier argued that the oral instructions given to the train crews in question were not messages of record and were not required to be copied by Conductors and Engineers and were not, in fact, copied by persons other than Telegraphers. We find that the Organization has failed to establish by probative evidence that the oral train orders were copied by persons other than Telegraphers. The record is devoid of any such evidence which would tend to prove this necessary prerequisite, and without such evidence, we are left with no alternative other than to deny the claims.

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;

Award Number 19602  
Docket Number TE-19433

Page 3

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: E.A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of February 1973.