

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22076
Docket Number CL-21810

Don Hamilton, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employes
(
(The Texas and Pacific Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,
GL-8200, that:

1. Carrier violated the Clerks' Agreement, and in particular Rule 48-A, when, beginning March 13, 1974, it required Atchison, Topeka and Santa Fe Railway Company employes (who are not covered by the Agreement) to receive, copy and deliver train orders to Texas and Pacific Railway Company train crews at a location where an employe under this Agreement is not employed, and now fails and refused to compensate Claimants as summarized below, and as required by Rule 48-A, paragraph (5). (Carrier's file 302-164)

2. Carrier shall now be required to compensate Mr. G. E. Allison assigned to position of Agent No. 253, Sweetwater, Texas, his relief, and/or successor(s), four hours' pay as required by Rule 48-A, paragraph (5), beginning with train order No. 701, March 13, 1974, and continuing each day thereafter for each train order copied, handled and delivered (during the position's assigned hours) to Texas and Pacific train crews, for execution, on the main line tracks of the Texas and Pacific Railway Company between Tecific and Clyde, Texas.

3. Carrier shall now be required to compensate Mr. T. L. Hughes assigned to position of Operator-Clerk No. 258, Sweetwater, Texas, his relief and/or successor(s), four hours' pay required by Rule 48-A, paragraph (5), beginning with train order No. 692, March 13, 1974 and continuing each day thereafter for each train order copied, handled and delivered (during the position's assigned hours) to Texas and Pacific train crews, for execution, on the main line tracks of the Texas and Pacific Railway Company between Tecific and Clyde, Texas.

4. Carrier shall now be required to compensate Mr. V. K. Norris assigned to position of Operator-Clerk No. 173, Sweetwater, Texas, his relief and/or successor(s), four hours' pay as required by Rule 48-A, paragraph (5), beginning with train order No. 608, March 14, 1974 and continuing each day thereafter for each train order copied, handled and delivered to Texas and Pacific train crews, for execution, on the main line track of the Texas and Pacific Railway Company between Tecific and Clyde, Texas.

OPINION OF BOARD: This case involves an alleged violation of Rule 48-A of the applicable Agreement, which provides as follows:

Rule 48-A
TRAIN ORDERS

"(1) No employ other than covered by this Agreement 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 employe entitled to call will be notified.

(2) A telegrapher will be called to handle train orders and instructions pertaining to the operation of a work train tying up or leaving from a station where a telegrapher is employed, but not on duty. The telegrapher will be paid in accordance with the call rule.

(3) Should non-telegraph agents be used to handle train orders on any day, they will be paid for eight (8) hours' service for that day at the minimum Agent Telegrapher's rate on the Division.

(4) If instructed by Train Dispatcher or other authority to clear train or trains before going off duty, leaving clearance card and/or orders in some specified place for those to whom addressed, the employe shall be paid as provided in the call rule.

(5) If train orders are handled by persons other than those specified in Paragraph (1) of this rule in other than emergencies as defined in Paragraph (6) of this rule at a location where an employe under this Agreement is not employed, a telegrapher to be designated by the District Chairman will be allowed four hours' pay at the minimum Telegraphers' rate applicable on the division. Four hours pay shall be applicable to each location in any consecutive four hour period, regardless of the number of orders handled. The Carrier will notify the District Chairman of each such train order handled with a copy to the General Chairman.

"(6) Emergencies, as referred to in Paragraph (5) of this Article, shall include only casualties or accidents, storms, engine failure, wrecks, obstruction to tracks, washouts, tornadoes, slides, or unusual delays which could not have been anticipated by the Dispatcher when the train was at the last previous open telegraph office, and which would result in serious delay to traffic."

In this case, The Texas and Pacific Railway Company (hereafter referred to as "Carrier") and the Santa Fe Railway entered into a joint trackage agreement to operate Unit Train Service between Fort Worth, Texas, and Clovis, New Mexico. The trains operating pursuant to this Agreement are identified as MFS-Westbound and SFM-Eastbound.

When MFS-Westbound departed Fort Worth, Texas, the Carrier dispatcher issued train orders which were copied, handled and delivered by Carrier Telegraphers to the train crew of the Carrier, for movement westward on mainline trackage of the Carrier to Tecific, Texas.

Upon reaching Tecific, the train crew obtained verbal authority from the Santa Fe Control Station to allow the train and crew of the Carrier to enter the Santa Fe trackage. The train then proceeded on Santa Fe trackage to the Santa Fe Depot, where it was "yarded" and turned over to Santa Fe train crews.

The train then continued on Santa Fe trackage with Santa Fe crews to Clovis, New Mexico.

The SFM-Eastbound originates in Clovis, New Mexico, on Santa Fe property, with Santa Fe crews and operates under Santa Fe orders to Sweetwater, Texas.

The Santa Fe crews are changed for crews of the Carrier at the Santa Fe Sweetwater Depot. The Santa Fe operator gives the Carrier crew clearance and other orders for operation of the train to Tecific. The Santa Fe operator also gives the Carrier crew train orders for movement from Tecific to Clyde, Texas.

The Organization filed claims asserting that the Carrier violated the Agreement with the Clerks beginning March 13, 1974, when the Carrier required Santa Fe employees to receive, copy and deliver train orders to Carrier train crews at a location where an employee under the Agreement is not employed.

The Organization seeks compensation for certain designated employees at the rate of pay of four hours each day in which orders were copied, handled and delivered to Carrier crews for execution on the main line tracks of the Carrier between Tecific and Clyde, Texas, during the assigned hours of each position.

The Organization argues that Award 20173 is controlling and should be followed in this case. The Award cited was between these same parties. Referee Dana E. Eischen found in that case that a dispatcher for the Louisiana and Arkansas Railway Company issued a train order. The order was received and copied by a conductor for The Texas and Pacific Railway Company. The handling of the order by the conductor was the basis of the claim in that case.

Referee Eischen held that the train order was copied and received by the conductor and that he was neither a train dispatcher nor an employee covered by the Memorandum Agreement. The claim was allowed as presented.

The Memorandum Agreement interpreted in Award 20173 is the same as what is now referred to as Rule 48-A in the instant case.

The rule relied upon says, "No employee other than covered by this Agreement and train dispatchers will be permitted to handle train orders * * *", and if train orders are handled by persons other than those so specified and no emergency as specifically enumerated in the Rule exists, then negotiated damages as set forth in the Rule are in order.

The key to this dispute is the language, "No employee".

In Award 20173, Referee Eischen quite properly found that the Carrier had required an employee not covered by the Agreement to receive and copy a train order.

In the instant case, the claim is that The Texas and Pacific Railway Company required Santa Fe employees to receive, copy and deliver train orders to Texas and Pacific Railway Company train crews.

Rule 48-A was negotiated between The Texas and Pacific Railway Company and the Brotherhood of Railway, Airline and Steamship Clerks to specifically guarantee that the Carrier would not permit or direct any other employees of the Carrier to handle train orders except in the certain specific instances enumerated in the Rule. The Rule

further provides that if the Carrier does so utilize other employees not covered by the Agreement, then and in that event a penalty payment as specifically set out in Section 5 of the Rule will be paid.

Award 20173 properly interpreted the Rule and applied it to the facts of that case.

However, the facts in the instant case are substantially different and do not give rise to the same interpretation.

The Santa Fe employees who received, copied and delivered the train orders to the Texas and Pacific Railway Company train crews are not employees of the Texas and Pacific Railway Company.

The Carrier made an Agreement with the Clerks to prohibit all other employees of the Carrier from handling train orders except as provided in Rule 48-A. Unless those who handle the train orders are employees of the Carrier, Rule 48-A does not apply.

This Award in no way modifies, interprets, amends or changes Award No. 20173. We re-affirm the holding in that case as applied to the facts enumerated by Referee Eischen. We do not agree that the same fact situation exists in the instant 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 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 not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1978.