

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 22781
Docket Number CL-22779

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Central Vermont Railway, Inc.

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-8737)
that:

1. Carrier violated the Agreement when on January 30, 1978 it caused, required and permitted Mr. P. J. Thibault, Conductor on Extra 4924 North, to handle (receive, copy and deliver) train orders No. 110 and 111 to Randolph, Vermont.

2. Carrier shall compensate Mr. T. W. Bellrose, Spare Telegrapher two (2) hours punitive rate.

OPINION OF BOARD: In this claim, petitioner contends that Carrier violated Agreement Rule 76.2 on January 30, 1978 when it permitted a conductor on Extra 4924 to handle train orders Nos. 110 and 111 to Randolph, Vermont. Rule 76, which pertains to handling train orders, reads in its entirety as follows:

"76.1 - No employee, 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 emergency in which case the employee will be paid for the call.

76.2 - If the emergency occurs at a closed station, the overtime call shall be paid to the spare telegrapher who is standing first out."

Specifically, petitioner asserts that Randolph was a closed station after the Vermont Public Service Board abolished the Agent/Operator's position and thus was subject to the requirements of this provision.

Carrier, contrariwise, contests this position and argues that Randolph was not a closed station and further that an emergency did not exist. It contends that the first paragraph of this Rule 76.1 is dispositive

of this interpretative impasse since the train orders were not issued at a station where an operator was employed.

In our review of the case, we recognize the diversity of Board opinions on contested train order handling claims, but we concur, in this instance, with Carrier that the second paragraph of Rule 76 is inapplicable to the facts of this dispute. The record does not reveal that petitioner proved by a compelling showing of probative evidence that Randolph was, in fact, a closed station or that an emergency was present at that location. The assertion made in the employees' ex parte submission did not include substantive verification that a confirming past practice was observed by Carrier.

On the other hand, we find that the first paragraph of this Rule is relevant to this dispute, since an operator was not employed at Randolph. We believe, upon a careful reading of the many Awards submitted on this point, that our uncomplicated interpretation of a similar rule to 76.1 in Third Division Award 14287 pertains to the facts herein. In that Award, we held in pertinent part that,

"... This rule, protective rather than permissive in its terms, provides that no employees, other than those covered in the schedule (Rule 1) shall be permitted to handle train orders. However, the rule obtains only 'at telegraph or telephone offices where an operator is employed and is available or can promptly be located ***.'

We cannot extend its application beyond the plain meaning of its words to include abolished stations where no operator is employed. ..."

We do not find that Randolph was a closed station or that an emergency was present there or even pursued as a consistent and explicit argument in petitioner's claim progression. We do find, correlatively, that Rule 76.1 applies to the facts of this grievance and as such warrants our denial of the claim.

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;

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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. Pauls*
Executive Secretary

Dated at Chicago, Illinois, this 14th day of March 1980.