

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23074
Docket Number CL-22793

Richard R. Kasher, Referee

PARTIES TO DISPUTE:

{ Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees
(Soo Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8696) that:

CLAIM NO. 1

Claim of H. H. Geske, Agent and Operator, Trout Lake, Michigan for 2 hours pro-rata on February 3, 1977, for violation of Telegraphers' Rule 20, when Agent and Operator Geske was required to relay via Bell Telephone Train Order No. 329 to the Conductor of Work Extra 731 at Engadine.

CLAIM NO. 2

Claim of R. H. Finstad, Agent and Operator, Gordon, Wisconsin, for 2 hours pro-rata on February 6, 1978, for violation of Telegraphers' Rule 20, when Agent and Operator Finstad was required to relay via Bell Telephone Train Order No. 111 to the Conductor of Extra DMIR 156 West at Chittamo.

OPINION OF BOARD: Claims Nos. 1 and 2 arose as a result of the Carrier requiring operators to verbally relay by telephone train orders, which they had previously copied, to train crews at locations where an operator working under the Agreement was not on duty in situations that did not involve emergencies. The Organization argues that such acts are in violation of Rule 20 of the parties' Agreement and the Joint Six Organization Train Order Agreement of November 28, 1945. Rule 20 of the parties' Agreement provides:

"Rule 20. Train Orders.

(a). No employee 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.

(b) When employees not covered by this agreement are required to handle train orders at a location where employees covered by this agreement are not on duty any portion of the day or night, the senior telegrapher working at the nearest location to the point on the seniority district where the train order is handled shall be notified and allowed a call at the minimum telegraphers' rate applicable on the seniority district for each occurrence.

(c) Except where other telegraphers are employed, Traveling Agents shall be considered employed and available to perform service required at all stations within his assigned territory. In the event the Traveling Agent is on duty at the time the violation occurs, he shall be paid two (2) hours at the pro rata rate of his assignment."

The Joint Train Order Agreement of November 28, 1945 provides:

"(1) It is hereby agreed that train and engine service employees will not be required to call the dispatcher for the purpose of receiving orders governing the movement of trains, and that train and engine service employees will neither be required nor permitted to copy train orders governing the movement of trains other than in emergencies as herein defined.

(2) Emergencies as herein specified shall include casualties or accidents, engine failures, wrecks, obstruction of tracks, washouts, tornadoes, storms, slides or unusual delays due to hot box or break-in-two that could not have been anticipated by dispatcher when train was at last previous telegraph office, which would result in serious delay to traffic.

(3) When no emergency exists, as above defined, an inquiry by train or enginemen as to the time or location of another train or in connection with their work, will not be considered a violation of this agreement when it does not involve the transmission of train orders, messages of record, reports or OS of trains.

(4) It shall not be considered as a violation of this agreement for train or enginemen to obtain necessary clearance at an automatic interlocker signal in stop position due to signal failure, or for train or enginemen on branch line trains to obtain check of trains direct from the dispatcher, at junction points where a telegrapher is not now employed, but only on such trains as are due to arrive at such junction point after branch line train has passed the last telegraph or telephone office before arrival at junction."

It is not disputed in the record that the Conductor of Work Extra 731 copied Train Order No. 329 at Engadine on February 3, 1977 (Claim No. 1). It is not disputed in the record that the Conductor of Extra DMIR 56 West copied Train Order No. 111 at Chittamo on February 6, 1978 (Claim No. 2). These acts seem to be in direct conflict with that part of paragraph (1) of the Joint Train Order Agreement of November 28, 1945 stating:

" . . . that train and engine service employees will neither be required nor permitted to copy train orders governing the movement of trains other than in emergencies as herein defined."
(underscoring added)

Inasmuch as it is not alleged that an emergency existed (paragraph (2) of the Joint Train Order Agreement) and the exceptions of paragraphs (3) and (4) of the Joint Train Order Agreement are not argued, it would seem that the call provided in Rule 20 (b) supra, would be appropriate.

The Carrier cited an award issued by Referee Blackwell, Award No. 32, Case No. 22, PLB No. 1682. Referee Blackwell denied a call to an operator who claimed that an operating rule was violated when a conductor was permitted to copy a train order, which was radioed rather than written and hand-delivered

by the operator. In denying the call, Blackwell emphasized the fact that the claimant performed all of the work that was required to be performed by an operator in the relaying of a train order under the applicable rule. The award cited by Carrier is distinguished, however, in that the rule concerning the relaying of a train order therein was not a joint train order rule.

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 violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Pauls
Executive Secretary

Dated at Chicago, Illinois, this 21st day of November 1980.

