

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24069
Docket Number CL-24230

George S. Roukis, Referee

PARTIES TO DISPUTE: { Brotherhood of Railway, Airline and Steamship Clerks,
 { Freight Handlers, Express and Station Employees
 { Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9502)
that:

(1) Carrier violated and continues to violate Rule 1, Rule 21, and other related rules of the telegraphers agreement when it allows employees other than telegraphers or dispatchers to handle train orders.

(2) Carrier shall now be required to compensate the senior available employee eight (8) hours at the appropriate rate of pay beginning March 31, 1980 and continuing until the violation is corrected.

OPINION OF BOARD: The Organization contends that Carrier violated Rules 1 and 21 of the Telegrapher's Agreement when it permitted employees other than telegraphers or dispatchers to handle train orders. Specifically, the Organization argues that Carrier violated Paragraph C of Rule 21 which precludes the use of train and engine service employees from transmitting or receiving train orders, clearances, written messages or blocking or reporting trains by telephone or telegraph except in emergencies. It asserts that Carrier's previous abolishment of the two telegraphers' positions at Colorado Springs on March 3, 1980 was a veiled attempt to avoid the purposes of the Telegrapher's Collective Bargaining Agreement by transferring their work to other employees.

Carrier argues that it did not violate the Agreement since no employee covered by the Telegrapher's Agreement was employed at Colorado Springs and thus it was permissible for train crew personnel to handle train orders. It avers that there were no telegraphers employed at any of the locations where the tramp switcher traveled and asserts that the issuance of train orders to employees other than telegraphers at locations where telegraphers are not employed is consistently observed on a system wide basis.

In our review of this case, we concur with Carrier's position. Firstly, consistent with our decisional law, Carrier is not estopped from abolishing a position or rearranging work assignments unless restricted by the Controlling Agreement. The current labor agreement does not preclude or qualify Carrier's right to abolish positions and the record is bereft of any evidence that the two telegrapher positions at Colorado Springs were abolished so as to transfer their work to other employees. Secondly, Rule 21 which is relied upon by both sides does not prevent Carrier from using non-agreement covered employees at locations where telegraphers are not employed. Carrier has asserted that the practice has been observed on a system wide basis, which the Organization contends is correct only to the extent that it was observed at locations where

telegraphers were never employed; but the latter assertion was never proven. Whether telegraphers were previously assigned to the location does not vary the intended purpose of the practice observed. If this were not so, Carrier would be barred from reducing telegrapher forces when warranted by changed economic conditions. In the instant case, when the two telegraphers' positions were abolished at Colorado Springs, Paragraph (A) of Rule 21 was thereafter applicable at that location. It is at locations where telegraphers are not present that non-agreement covered employees are permitted to handle train orders. Accordingly, given the facts of record, we are constrained to follow the basic principle enunciated in Third Division Award No. 19927, wherein we held in pertinent part that:

"If train orders are handled at points where no covered employees are employed, under Article 20 they may be handled by other employees."

We will deny 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;

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: Acting Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of December 1982.