

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24719
Docket Number CL-24728

Edward L. Suntrup, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees

PARTIES TO DISPUTE:

(
(Maine Central Railroad Company
(Portland Terminal Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9651)
that:

CLAIM NO. 1

1. Carrier violated the Agreement between the parties when on July 28 and 29, 1981, it caused, required or permitted Engineering Department Employees not covered by the Telegrapher's Agreement to handle train orders between Waldoboro, Maine and Rockland, Maine.

2. Carrier shall now be required to compensate Operator Robert Frizzle for a two (2) hours call each date July 28 and 29, 1981, as a result of said violations of the Agreement.

CLAIM NO. 2

1. Carrier violated the Agreement between the parties when on July 30, 1981, it caused, required or permitted Engineering Department Employees not covered by the Telegrapher's Agreement to handle train orders between Warren, Maine and Rockland, Maine.

2. Carrier shall now be required to compensate Operator Robert Frizzle for a two (2) hour call for July 30, 1981, as a result of said violation of the Agreement.

OPINION OF BOARD: By correspondence dated July 29 and July 30, 1981, the Claimant, R. Frizzle, submitted to the Carrier pay claims for the extra work on July 28, 29 and 30, 1981. The claims and the subsequent handling of this case on property deal with the Carrier's alleged violation of Article 21 of the current Agreement under the title of handling train orders. The dispute at bar specifically centers on the issuance of train Orders No. 28 on July 28, 1981, No. 16 on July 29, 1981 and No. 14 on July 30, 1981 which were addressed to the Carrier's Engineering Department and which were copied on these days by the Claimant while he was on duty. In all instances the three (3) Orders were delivered to a work train at non-station points by Engineering Department personnel instead of by the Claimant as so requested in the Statement of Claim.

The basis for Carrier's denial of the claim is severalfold. First of all, it is the Carrier's position that Operating Rule 217 here controls rather than Agreement Rule 21. Further, the Carrier argues, even if Rule 21 were at stake, it would be inapplicable since the Claimant was "on duty and under pay at the time the Order(s) (were) delivered".

This case centers on the relationship between current Agreement Article 21 and Carrier Operating Rule 217 and the extent to which they might apply to the instant dispute. For the record both are herein quoted in full.

"ARTICLE 21.
Handling Train Orders.

(a). No employe other than covered by this Agreement and Train Dispatchers will be permitted to handle train orders except in cases of emergency.

(b). If train orders are handled at stations or locations where an employe covered by this Agreement is employed but not on duty, the employe, if available or can be promptly located, will be called to perform such duties and paid under the provisions of Article 7; if available and not called, the employe will be compensated as if he had been called.

(c). Emergencies as specified in the preceding paragraphs of this Article, shall include only casualties or accidents, storms, engine failures, wrecks, obstructions to tracks, washouts, tornadoes, slides, or unusual delays due to hot boxes or break-in-two, that 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 in traffic." (Underscoring added)

Rule 217

"A train order to be delivered to a train at a point not a train order office, or at which the office is closed, must be addressed to 'C&E' at (or between) _____, care of _____' and forwarded and delivered by the conductor, or other person in whose care it is addressed, and who is responsible for its delivery. The numbers of such train orders must be shown in the usual manner on Clearance Form A of the train making delivery. For orders which are sent in the manner herein provided, to a train, the superiority of which is thereby restricted, the operator will be directed to make an extra copy of the order, which he will deliver to the person who is to make delivery of the order. On this copy, the person delivering the order must secure the signature of the conductor and engineer addressed. This copy he must deliver to the first operator accessible, who must at once transmit the signatures of the conductor and engineer to the train dispatcher and preserve the copy. When form '31' is used, 'Complete' will be given upon the signature of the person by whom the order is to be delivered. Under such circumstances 'Complete' must not be given to the order for an inferior train until the train dispatcher has received signatures of the conductor and engineer of the superior train." (Underscoring added)

There is no question of an emergency situation here and that issue need not be discussed.

Organization's position is correct when it states that terms of a collective bargaining Agreement have priority over Operating Rules if they are in conflict. Such, however, is not the case here. Although the exactitude of the language which the parties collectively negotiated in Article 21(b) cited above is wanting, otherwise there would be no dispute over the intent of this Article's subsection in question, it appears reasonable that the intent of the language here means that train Orders shall be "handled" (meaning received, copied and delivered as Third Division Award 10063 attests) by those covered by the Agreement as it applied to the instant case only "at stations or locations where an employee covered by this Agreement is employed but not on duty, etc....". But what of the "handling" of Orders at locations or points which are "not a train Order Office..."? This type of situation is not unequivocally handled by Article 21(b) and may be regulated by Carrier Operating Rule 217, as the first sentence of this Rule, cited above, indicates. Although the facts of the cases ruled on earlier by the Board are not exactly the same in Third Division Awards 21397 and 20074 (and Award 6363 by reference) as herein, they are analagous. There the Board ruled that the Carrier had not erred in allowing train Orders to be delivered by those not covered by the current Agreement to a point where no telegrapher was employed. The Board rules likewise with respect to 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 Employes involved in this dispute are respectively Carrier and Employes 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

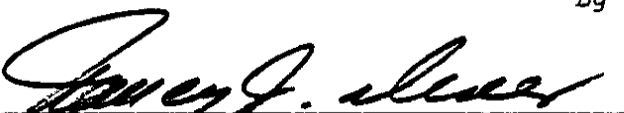
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois this 9th day of March, 1984