

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24753
Docket Number CL-24827

Robert Silagi, Referee

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

PARTIES TO DISPUTE:

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(The Atchison, Topeka and Santa Fe Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9661)
that:

(a) Carrier violated the provisions of the current Clerks' Agreement at Springfield, Colorado, on September 24, 1981, when it required and/or permitted an employe not covered by the Agreement to handle Train Orders at an office of communication where an employe covered by the Agreement is assigned and available when no emergency existed, and

(b) Carrier shall now compensate Claimant E. L. Lewis, who is the qualified employe who should have handled the Train Orders, three (3) pro rata hours' pay at the pro rata rate of her position, in addition to any other compensation Claimant may have received for this day, as a result of such violation.

(c) Upon expiration of 60 days from the original date of submission Carrier shall also pay 10% per annum interest on the amounts claimed.

OPINION OF BOARD: The issue in this case is whether train orders which Claimant had received while on duty must be personally handed to a train crew by claimant, or may be left on her desk to be picked up by the train crew after claimant had been released from duty.

Claimant a regularly assigned agent, worked from 6:45 a.m. to 3:45 p.m. Carrier instructed claimant, after copying train orders and clearance card, to leave these documents on her desk after the close of her work for the train and engine crew to pick up when they reported for duty sometime subsequent to her departure. The Organization alleges that Carrier violated Rule 3A Handling Train Orders, which reads:

"No employee other than covered by this Agreement and train dispatchers will be permitted to handle Train Orders at offices of communication where an employee covered by this Agreement is assigned and is available or can be promptly located. At such locations, when Train Orders are not handled as outlined in this Rule 3-A, except in cases of emergencies as defined in Rule 3-B, the qualified employee who should have handled the train order will be paid a call."

The essence of this dispute is the interpretation of the phrase "to handle train orders".

The Organization asserts that Rule 3-A is the "standard train order" which has been the subject of many awards of the Third Division. These awards are committed to the view that said phrase is to be construed as contemplating the receiving, copying and delivering them to the train crews which are to execute them Award 2926 (Carter). A statistical analysis of the cases between 1940 and 1963 shows 15 sustaining awards and 3 denials, (Award 11788 (Dorsey). More recent cases dealing with the same issue rely upon the principle of stare decisis in declaring that to leave train orders in a way-bill box or other receptacle for pick-up by the train crew violates the standard train order, Award 12240 (Coburn); 15411 (McGovern).

Carrier's position is that claimant "delivered" the train orders and clearance card when she placed them on the register book as instructed by the Superintendent to be picked up by the train crew when it reported for duty. The instructions of the Superintendent were in accordance with operating Rule 210(a) and in compliance with Rule 3 of the Agreement. All documents were "handled" only by claimant. Carrier asserts that personal delivery is not a component of Rule 3A relying upon Award 20216 (Bergman).

Rule 210(a) contains the guidelines for dealing with train orders. After receiving and verifying the accuracy of the order, the "employee will...deliver a copy to each person addressed; except...delivery may be made as required by Rule 217, or as prescribed by special instructions issued by the superintendent."

Carrier's operating rules are unilateral company rules and are not part of the Agreement between the parties. Where there is a conflict between former and the latter, the operating rules must yield, Award 6678 (Bakke).

Careful consideration has been given to the cases cited by Carrier in defense of its position, Awards 7343, 11473, 20074, 20216 and 21397 which rejected personal delivery as a necessary ingredient of handling train orders. The precise issue in dispute is not new to the Board. In this connection Award 12240 (Coburn) is relevant:

"It is apparent that the weight of authority, in terms of numbers of awards and under years of consistent interpretation and application of the rule, clearly sustains Petitioner's position on the issue and facts present here. This is not to say that the denial Awards were unsound, or palpably in error. What disposes of the issue, in our opinion, is the principle of stare decisis. Where, as here, the Board is confronted with a long line of precedents which first postulate and then maintain a consistent interpretation of contract language we should refrain from disturbing what ought to be a settled matter."

Carrier cites Rule 3-G Use of Radio, as evidence that personal delivery of a train order is not necessary. Radio communications used to handle train orders were to be delivered in accordance with the rules of the Agreement. It was impossible to make personal delivery of such messages. Therefore, Carrier reasons, to handle train orders under Rule 3 can only be construed as receiving, copying and relaying orders.

The Organization responds that Rule 3G was first negotiated into the Telegrapher's Agreement in 1965, incorporated into the combined Agreement of TCU and BRAC in 1972 and subsequently deemed superfluous and not included in the revised Agreement of 1981. Moreover, the contention that a radio message could not be personally delivered is not true because personal delivery would be made by the employee who received and copies the message.

We believe that the argument made by Carrier with respect to former Rule 3-G is irrelevant to the issue herein.

For the reasons cogently stated by Referee Coburn we shall sustain the claim. If desired, a change in Rule 3A should be made at the bargaining table, not here. However, the interest requested in part (c) of the Organization claim must be disposed of. Carrier argues that there is no rule in the Agreement authorizing payment of interest on claims sustained. On the contrary, a Section 6 Notice served by the Organization upon Carrier in 1974 requesting the inclusion of such a rule was not included in the settlement of that notice the following year. The claim for interest must, in Carrier's view, be denied.

We agree with Carrier's interpretation that interest may not be allowed.

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

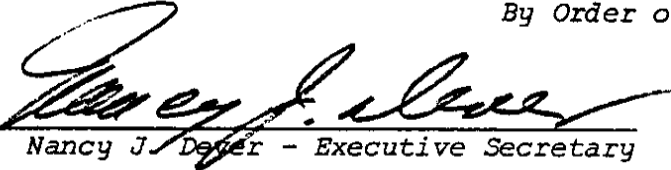
That the Agreement was violated.

A W A R D

Claim parts (a) and (b) are sustained. Claim part (c) is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division.

Attest:


Nancy J. Dwyer - Executive Secretary

Dated at Chicago, Illinois this 30th day of March, 1984