

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25607
Docket Number CL-25644

Frances Penn, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Delaware and Hudson Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9850)
that:

(a) Carrier violated Article No. 23 of the Agreement when on October 1, 2, 6, 17 and 18, 1981, Carrier required an employe not covered by the Agreement to copy train orders.

(b) Claimant V. D. Slamas be compensated one call at the rate of time and one-half for each of the following dates: October 1, 1981; October 2, 1981; October 6, 1981 (three calls); October 17, 1981 (four calls); and October 18, 1981; in accordance with Article No. 14.

OPINION OF BOARD: The facts in this matter are not in dispute. The Claimant, a Telegrapher, requests compensation for train orders which were copied by Employees who are not covered by the Agreement at ten locations on the property. No Employees covered by the Agreement were stationed at the locations in question.

The Organization cites both Article 1, the Scope Rule and Article 23 of the Agreement, dated April 1, 1957. Article 1 reads:

"ARTICLE NO. 1

"Scope

"A. The following rules of service and rates of pay will apply to Agents, Ticket Agents, Agent-Assistant Yardmasters, Assistant Agents, and Operators of mechanical telegraph machines, as listed in Article No. 38, and such other positions in these classifications as may be added thereto; and to Agent-Telegraphers, Agent-Telephoners, Assistant to Agents, Telegraphers, Telegrapher-Clerks, Telephone Operators (except Switchboard Operators), Towermen, Levermen, Tower and Train Directors, Block Operators, CTC Machine Operators (employees whose duties require the operation of CTC machines where the issuance of train orders is not a part of the assignment); all of whom are hereinafter referred to as employees.)

"B. All employes herein specified shall be paid on the hourly basis, except as shown in Article No. 38 or as may be otherwise agreed upon."

Article 23 reads:

"ARTICLE NO. 23

"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 No. 14; 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 to traffic."

"ARTICLE NO. 14

"Calls, Overtime, Suspensions, Etc.

"A. Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

The Organization maintains that the Claimant was available on each of the occasions to copy and deliver train orders and the fact that he was not used by the Carrier was a direct violation of the Agreement which provides, according to the Organization, that any work related to train orders, including the copying of train orders, belongs exclusively to Telegraphers. The Organization states that the language of the Agreement, which has been in effect since 1957, has the same meaning as it did when it was originally agreed to. Since the Agreement applies to the entire property, the Carrier must comply with the Agreement on its entire property.

The Carrier contends that for a number of years Employees not covered by the Agreement were permitted to copy train orders at locations where Telegraphers are not employed. The Organization, the Carrier states, has not proven that the handling of train orders at locations where Telegraphers are not employed is work reserved exclusively to Employees covered by the Agreement.

Examination of the many Awards cited by the Parties shows that these provisions relied on in this claim and others similar to it on other Railroads have been the subject of controversy and numerous Awards over the years. However, the Awards are consistent in holding that the Scope Rule does not define or describe the particular duties of the job titles enumerated therein. It merely recognizes the jobs covered by the Agreement and the representational jurisdiction of the Organization. Because the Scope Rule is general in nature, the Claimant's right to recover under it must be determined from a consideration of tradition, historical practice and customs. As stated in Third Division Award No. 10379:

"There is no disagreement on the facts in this case. There is disagreement only with the interpretation of the Scope Rule, Rule 58 and the applicability of the Coal Fields Agreement of March, 1937.

"The Scope Rule does not define or describe the particular duties of the job titles enumerated therein. It merely recognizes the jobs covered by the Agreement and the representational jurisdiction of the Organization. This is a well determined principle which this Board has pronounced in numerous decisions. It is sufficient to cite only Awards No. 8793 (Dougherty), 8831 (Dougherty), 8838 (McMahon), 10070 (Gray), 9204 (Stone) and 9953 (LaDriere). This principle was well stated in Award No. 9956 (LaDriere) as follows:

...the claimant relies on the Scope Rule which is general in nature and specifies positions rather than work to be done, so that claimant's right to recover thereunder must be resolved from a consideration of tradition, historical practice and custom...."

After careful evaluation of the record in this case, the Board concludes that the Organization has failed to prove that it has the exclusive right to copy train orders on this property at locations where no Telegraphers are employed. The Organization has submitted no substantive evidence to show that it is the "tradition, historical practice and custom" for Telegraphers to have exclusive claim to copy train orders at such locations. The Organization has not rebutted the Carrier's statement in its submission to this Board, "Carrier has for numerous years permitted engine/train service employees to copy train orders at points/locations where telegraphers are not employed. This is a historical practice and custom which cannot be ignored."

A long line of Third Division Awards, among them Awards No. 1581, No. 9262 and No. 13972 establish that at locations where no Telegraphers are employed other train service Employees may copy train orders. For this reason, the Board will deny this 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

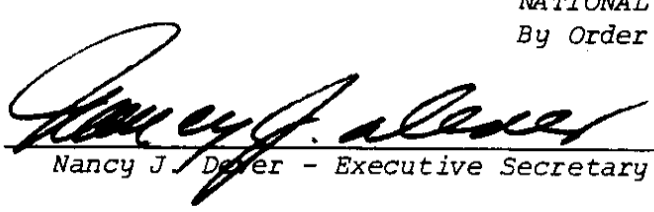
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 22nd day of August 1985.

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