



SPECIAL BOARD OF ADJUSTMENT NO. 525

AWARD NO. 25

CASE NO. 25

GRAND DIV.: ORT 3650

ORGANIZATION FILE:

R-1277

CARRIER FILE:

TE-1-62

EMPLOYEES' STATEMENT OF CLAIM:

Carrier violated the terms of the parties' Agreement when it allowed and used engineer on No. 2 to deliver Train Order No. 326 to Extra 5202 West between Portland and Livesy, Colorado, on November 7, 1961.

Carrier shall, because of the violation set out in paragraph 1 hereof, compensate Telegrapher C. M. Barnes the equivalent of eight (8) hours pay at the rate of position occupied.\*

\*Carrier contends that the original claim was for eight (8) hours pay, prorata rate, for this violation.

SPECIFIC FINDINGS:

The Organization claims that it is Telegrapher's right to deliver train orders at blind sidings where no telegraphers are employed. Here, the telegrapher at Canon City copies train order over the phone from train dispatcher at Denver. The message was given to engineman on Train 2 to deliver to a train upon a siding between Portland and Livesy. In so doing, the Organization alleges the engineman on No. 2 was performing the work of telegrapher in violation of Rule 21 of Telegraphers' Agreement. Rule 21-C-1, reads:

- "1. Train and engine service employes will not be required or permitted to transmit or receive train orders, clearances, written messages, or to block or report trains by telephone or telegraph, except in emergency."  
(Emphasis supplied).

The Organization relied upon numerous settlements made upon the property at the Superintendent - Local Chairman level. Carrier attributes such settlements to a settlement of certain claims made by the Manager of Personnel and General Chairman in a letter dated February 28, 1951, wherein it was stated, in part, as follows:

"It is our position that the handling of train orders in care of another train to either a station or point after telegrapher is off duty or to a point where no telegrapher is employed is contrary to the provisions of Rules 1 and 22 of the current Agreement. See Award, Third Division 2087 (on D. & R. G. W.) also the following awards Third Division 86, 1096, 1167, 1170, 1304, 1456, 1489 also 5087 and 5122."

The Manager of Personnel then stated in said settlement letter:

"As I understand it, the only reason why you contend that Rule 1 and Rule 21 of the current general agreement were violated by the delivery of train orders under provisions of Operating Rule 217 and that a penalty payment for a 'call' is due because of such alleged violation, is predicated upon findings in the awards rendered by the National Railroad Adjustment Board, Third Division, specifically referred to in your letter.

"In my opinion the philosophy developed in the awards referred to is unsound and certainly does not reflect the intent of the parties who originally negotiated and adopted Rule 1 and Rule 21 as they appear in the current general agreement covering the class of our employees who are represented by your organization.

"Nevertheless, because of the facts in this particular case being somewhat similar to some of the findings in the Adjustment Board awards to which you refer, this claim will be allowed.

"This settlement is made with the distinct understanding that future claims of the same kind must stand upon their own merits and be subject to agreement rules as they then exist and, to the extent that they may then have application, findings of the Adjustment Board or whatever other tribunal may at that time have to make such findings, will be considered in the light of the then current awards."

The cited Award 2087 which arose from this property concerned the mailing of an order to a point where two telegraphers were employed but were not on duty. This is not our case. Here, no telegrapher was employed at Livesy. We believe this difference in fact to be of controlling importance. Neither are we confronted with a case of transmitting or receiving train orders etc. by telephone or telegraph which is the coverage afforded by Rule 21(C) relied upon by the Organization. The transmitting and receiving of the train order by use of the telephone was done earlier by the dispatcher and the telegrapher in this case. Therefore, we find that this paragraph is not applicable to the situation at hand.

The broader term "handling," which could be construed to apply to hand delivery of a train order, is used in Rule 21(A), reading:

"No employes other than covered by this contract and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where a telegrapher is employed and available or can be promptly located, except in an emergency in which case the telegrapher will be paid for a call." (Emphasis supplied).

To give the rule the effect that is contended for by the Organization, we would be compelled to ignore that portion of the rule which is underlined above. As drafted, the prohibition applies only to situations outlined in the underlined portion of the Rule, which is not our case.

Award No. 6639 (Bakke) is not persuasive as he injects the broader term "handling" into the consideration of Rule 21(C) which, as we have pointed out, deals only with the limited act of transmitting or receiving train orders, etc. by telephone or telegraph.

The above reasoning finds support in recent Awards No. 9445 (Johnson), 10442 (Gray), 10604 (Dolnick), and Award No. 13, Special Board of Adjustment No. 506 (Telegraphers-Mo.Pac.).

We incorporate the following from Award 6824 (Shake) in respect to the alleged applicability of the Scope Rule:

"Since the Scope Rule of the effective Agreement is general in character and does not undertake to enumerate the functions embraced therein, the Claimant's right to work which they contend belonged exclusively to them must be resolved from a consideration of tradition, historical practice and custom; and in that issue the burden of proof rests upon the Employes."

The settlements made on this property during the past dozen years can not serve to reflect historical practice or to destroy the practice reflected by Operating Rule 217 prior thereto in view of the expressed condition under which the claims were paid.

AWARD

Claim denied.

SPECIAL BOARD OF ADJUSTMENT NO. 525

(Signed) J. Glenn Donaldson  
J. Glenn Donaldson, Neutral Member  
Chairman

Denver, Colorado  
March 9, 1964

(Signed) R. K. Anthis  
R. K. Anthis, Organization Member

(Signed) C. E. Baldrige  
C. E. Baldrige, Carrier Member