

SPECIAL BOARD OF ADJUSTMENT NO. 306

THE ORDER OF RAILROAD TELEGRAPHERS

VS.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY

STATEMENT  
OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven and Hartford Railroad that:

1. Carrier violated the prevailing Agreement between the parties, and continues to violate said Agreement when, commencing on or about September 15, 1958, it required operators at Ferry Street, Fall River, Massachusetts and New Bedford, Massachusetts to leave train orders and clearances for trains on the train register at their respective offices at times when said operators were not on duty.
2. The assigned operator at Fall River, L. Gamauch, Shall be compensated the equivalent of a "call" at the rate of the position of operator, Ferry Street, in accordance with Article 7, of the Telegraphers' Agreement, for each occasion, commencing on or about September 15, 1958 that train orders and/or clearances are left at that office when an operator is not on duty, continuing until the condition is corrected.
3. The assigned operator (Ticket Agent-Operator) at New Bedford, Mrs. Z. Miller, shall be compensated the equivalent of a "call" at the rate of the position shown, in accordance with Article 7, of the Telegraphers' Agreement, commencing sixty days prior to December 1, 1958 that train orders and/or clearances are left at the office when an operator is not on duty continuing until the condition is corrected.
4. On such day or days as employees assigned from the extra list perform service at Ferry Street or New Bedford, in place of the regularly assigned employees, such extra employees shall be compensated in accordance with the terms of Article 7, of the Agreement, when the violative condition prevails."

FINDINGS:

This claim is based upon instructions to operators to prepare train orders and leave them on the train register books to be picked up by the train crew to which addressed after the regular hours of the operator. No employe handled the train order except the operator and the conductor to whom it was directed.

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Article 20 of the Agreement is as follows:

"(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 of 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 has been called."

The question of whether such a rule requires personal delivery by the operator to the train crew has been before the Third Division, N.R.A.B., many times and there is conflict in its awards. Those awards were reviewed and analized and its Award No. 8327. The greater number of prior awards sustained the proposition that personal delivery was required but that award rejected that proposition and sustained what was theretofore the fewer number of awards.

It is clear that the proposition that personal delivery is required arose out of dicta in an early award and not from the language of the rule. The rule simply prohibits employes other than operators and dispatchers from handling train orders and in this case no one but the operator handled it between its origination and its receipt by the train crew to which directed. Since the reasoning of Award No. 8327 accords with the language of the rule it must be sustained.

AWARD: Claim denied.

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/s/ Dudley E. Whiting  
DUDLEY E. WHITING, REFEREE

Russell J. Woodman /s/  
RUSSELL J. WOODMAN, Employee Member  
Dissenting

/s/ J. J. Gaherin  
J. J. GAHERIN, Carrier Member

DATED: March 7, 1961

DISSENT

In Award No. 21 it is admitted by the majority that the same question here involved has been decided by the Third Division many times, and that "The greater number of prior awards sustained the position of the Employees", such as Awards 86, 1096, 1166, 1170, 1422, 1456, 1680, 1878, 1879, 2087, 2926, 2930, 3611, 3612, 1169, 3613, 3614, 3670, 4057, 5013, 5122, 5872, 8657, 8661, et al. Yet, all these precedent-setting awards have been apparently brushed aside in order to follow the erroneous thinking in the decision of Referee McCoy in Award 8327 which was subsequently over ruled by Third Division Award 8657.

The train order rule in the New Haven Railroad Telegraphers' Agreement is like train order rules in many of our agreements whti other carriers. It has been interpreted time after time by the Third Division, as evident in the above quoted statement and cited Awards. Hence, it is being applied rather generally on most properties directly contrary to the decision in this instance. If this Award 21 is permitted to remain effective on this property it will mean that the New Haven Railroad rules, although identical with rules on other properties have different meanings and are to be applied differently. That is not like it should be.

/s/ Russell J. Woodman  
Employee Member