PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY (Lines West of Mobridge)

STATEMENT OF CLAIM: Claim of Conductor R. R. Gardner for a minimum day at through freight rate, June 18, 1949.

JOINT STATEMENT OF FACTS: June 18, 1949, Conductor Gardner was in charge of passenger train No. 17, Spokane to Tacoma. At Cle Elum, an intermediate freight subdivision terminal, Conductor Gardner was given an envelope containing train orders for a work train which was tied up at Hyak, an intermediate point 29 miles west of Cle Elum where no telegraph operators were employed, with instructions to place the envelope in the waybill box at Hyak together with a register check of his own train.

Claim for the minimum day is based on current Conductors’ Schedule Article 10, Rule 11-(a), reading:

“Services rendered by regularly assigned conductors in excess of their regular runs, will be paid for at regular rates for class of service rendered. Earnings of regularly assigned passenger conductors under this rule may be used to make up money monthly guarantee.”

Oral hearing is waived.

POSITION OF EMPLOYEES: Subsequent to January 16, 1949, the office at Hyak was open on week days from 8:00 A.M. to 4:00 P.M. and from 10:00 P.M. to 6:00 A.M., and sometime between January 16th and the date of this claim the carrier pulled off the telegraph operators and closed the office at Hyak.

Shortly after the closing of this office they started tying up a work train at this point and later on tied up a second work train at Hyak, and at the time of this claim there were two work trains tying up at Hyak.

After the office at Hyak was closed and the work train started to tie up at that point the carrier sent the orders for the work train to Hyak in care of the engineers of the passenger train with instructions to place them in the waybill box.
The Order of Railroad Telegraphers protested the handling of train orders in this manner, and the engineers claimed an extra day for being required to place the orders in the waybill box. The carrier then started giving the orders to the conductor in a sealed envelope with instructions to place them in waybill box at Hyak, and leave a register check, for example:

"Tacoma—June 21, 1949

"C & E No 17
Cle Elum

"Place orders for work trains in waybill box at Hyak and leave register check of your train with them for the work trains.

NCG."

Train No. 17 is a regular scheduled passenger train on which a train baggageman is employed and among his duties is the handling of railroad mail, but it will be noted that in the Joint Statement of Facts Conductor Gardner was given a sealed envelope containing train orders and this could not be considered anything but railroad mail, therefore, should have been handled by the baggageman.

Rules 217, 217-A and 217-B of The Consolidated Code of Operating Rules and General Instructions, read as follows:

"217. A train order to be delivered to a train at a point not a train order office, or at one at which the office is closed, must be addressed 'C & E . . . . . . at . . . . . care of . . . . . .' and forwarded and delivered by the conductor or other person in whose care it is addressed. When form '31' is used, 'complete' will be given upon the signature of the person by whom the order is to be delivered, who must be supplied with copies for the conductor and engineer addressed, and a copy upon which he shall take their signatures. 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.

"Orders so delivered must be acted on as if 'complete' had been given in the usual way.

"For orders which are sent, in the manner herein provided, to a train, the superiority of which is thereby restricted, 'complete' must not be given to an inferior train until the signatures of the conductor and engineer of the superior train have been sent to the train dispatcher.

"217 (A). On railroads that use form '19' orders exclusively, a train order to be delivered to a train at a point not a train order office, or at one at which the office is closed, must be addressed to

'C & E . . . . . . at . . . . . care of . . . . . ,'

and when 'complete' is given will be forwarded and delivered by the conductor or other person in whose care it is addressed, who must be supplied with copies for the conductor and engineer addressed, and when the superiority of their train is thereby restricted, a copy upon which he shall take their signatures. 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.

"Orders so delivered must be acted on as if 'complete' had been given in the usual way.
"For orders which are sent in the manner herein provided to a train, the superiority of which is thereby restricted, 'complete' must not be given to an inferior train until the signatures of the conductor and engineer of the superior train have been sent to the train dispatcher.

"217 (B). When delivery of a train order as provided in Rules 217 or 217 (A) is to be made by another train, the train order must be addressed in care of conductor or engineer of delivering train, both of whom must be supplied with copies. The person in whose care it is addressed must be supplied with clearance and copies of the train order for delivery to the conductor, engineer and rear trainman of the train addressed. The number of the train order to be delivered must be included on the clearance for the train making delivery and engineer will make stop to effect delivery."

Without regard to the above rules all that was done in the instant case was to put some orders in an envelope and have the conductor place the envelope in a waybill box at Hyak.

The reason for the Carrier delivering orders to the work trains in this manner is because of an agreement made December 6, 1939, effective January 1, 1940, and reads as follows:

"MEMORANDUM OF AGREEMENT
between the
Chicago, Milwaukee, St. Paul & Pacific Railroad Company
(Lines West)
and the
Brotherhood of Locomotive Engineers
Brotherhood of Locomotive Firemen & Enginemen
Order of Railway Conductors
Brotherhood of Railroad Trainmen
Order of Railroad Telegraphers
REGARDING TRAIN AND ENGINE SERVICE EMPLOYEES
HANDLING TRAIN ORDERS OR OTHER TELEPHONE INFORMATION INCIDENTAL TO TRAIN MOVEMENT

"At points where telegraphers are employed, train dispatchers will not be required nor permitted to transmit train orders or handle block by telephone or telegraph with train and engine service employees, except in emergency; nor will train and engine service employees be required or permitted to call the dispatcher or a telegrapher at another station for the purpose of taking train orders or blocking trains except in emergency.

"At points where there is no telegrapher employed, train and engine service employees will not be required nor permitted to block trains or to copy train orders, except in emergency, and it is concurrently understood and agreed that:

"(a) Telephone conversation about work, and (b) telephone conversation about the probable arriving time of trains, and (c) at Junction points, mine or spur tracks where telegraphers are not now employed, telephone check on over due trains will not be construed as a violation of this agreement.

"Emergency, as used in this agreement, is defined as: storms, accidents, obstructions caused by wrecks, washouts, high water,
slides and snow blockades, unusual delay due to failure of the fixed signal to clear; unusual delay to trains due to hot boxes, engine or other equipment failure, or break-in-twos or other unforeseen situations where life or property may be in jeopardy requiring immediate attention which could not have been anticipated when train was at previous telegraph office, and which would result in serious delay to trains.

"This agreement shall become effective as of January 1, 1940, and remain in effect until changed in accordance with the Railway Labor Act as amended.

(Signed) Byron Daubenspeck  (Signed) G. A. Robison
General Chairman—B. L. E. General Chairman—O. R. C.
(Signed) I. A. Hoffman  (Signed) L. A. Borden
General Chairman—B.L.F.&E. General Chairman—B. R. T.
(Signed) G. E. Leighty
General Chairman—O. R. T.
Seattle, Wash.
December 6, 1939
(Signed) N. A. Ryan
General Manager—(Lines West)
C. M. St. P. & P. R. R. Co."

From the above agreement it will be noted that if the conductors on the work trains were required or permitted to copy their own train orders over the telephone at Hyak it would be a violation of the agreement, and the carrier has allowed many claims for a minimum day to men required to copy train orders in violation of the agreement.

Hyak is an intermediate point between Cle Elum and Tacoma and there are no diverging lines at this point and it has never been designated as a registering station, yet the instructions were—"leave a register check of your train with them for the work trains", which the Committee contends was unnecessary work because the dispatcher could have included the register check of this train at Hyak with the other orders as No. 17 would have to have arrived at Hyak before the conductors on these work trains received any orders, therefore, the dispatcher would know that if the conductors on the work trains received their orders from the waybill box, No. 17 must have arrived, therefore, Conductor Gardner was required to perform unnecessary work which was in excess of his regular assignment.

Under date of September 26, 1940, Mr. G. E. Leighty, General Chairman, O. R. T., addressed a letter to Mr. G. A. Robison, General Chairman, O. R. C., reading:

"On my recent trip over the Division, I found that the operators at various stations had been required to copy a train order for the work train before going off duty and leave it in the bill box for the conductor to pick up the next morning when going to work. The purpose of this handling, of course, was to deprive the operator of a call for the work train went to work prior to the assigned starting time of the operator.

"We collected calls for the employees concerned under the recent decisions of the Third Division of the National Railroad Adjustment Board and in an attempt to evade payment of calls for this service the Chief Dispatcher now has the conductor on the work train secure his orders from the operator before the operator goes off duty for the work train service to be performed on the following day.

"We are filing claims for the operators concerned, inasmuch as, employees other than those covered by our agreement are required to
handle train orders. I do not believe that the conductor of a train should be required to receive orders under such circumstances and be responsible for these orders during the time that he is off duty.

"I would be pleased to have you give consideration to this matter and if you can consistently do so, protest this additional responsibility to the Management."

It will be noted from the above letter that the Third Division of the National Railroad Adjustment Board recognized that delivering orders in a bill box to be picked up later was not the proper procedure in the handling of train orders and that when they allowed calls for handling orders in this manner they recognized that the operator should have been called to get the orders for the train.

While the agreement effective January 1, 1940, prohibits train and engine service employees from copying train orders over the telephone, except in emergency, nevertheless, both the carrier and the organizations recognizes the fact that these employes can copy orders, not in emergency, for which they will receive one minimum day’s pay, therefore, in accordance with the decisions of the Third Division of the National Railroad Adjustment Board and the position of the carrier and the organizations the conductors on the work trains should have copied their own orders.

Therefore, the Committee contends:

"That the delivering of orders in this case could not be considered as being handled in accordance with Operating Rules 217, 217-A and 217-B.

That Conductor Gardner was used in excess of his regular run when required to leave an unnecessary register check of his train at Hyak, a non-registering station.

That Conductor Gardner was used in excess of his regular run when required to handle and deliver railroad mail, which is work properly belonging to the baggageman.

That he delivered these orders in the waybill box at Hyak when he was performing service that properly belonged to others which would not be in accordance with Award No. 615 of the First Division, National Railroad Adjustment Board.

That Conductor Gardner is entitled to one minimum day’s pay at through freight rate under the provisions of Article 10, Rule 11-a, quoted in the Joint Statement of Facts.

All data submitted herewith in support of the Committee’s position has been presented to the Carrier or its duly authorized representative.

(Signed) G. A. Robison
General Chairman, O. R. Co."

POSITION OF CARRIER: Occasionally it is necessary, particularly in the mountainous territory, to tie up work train crews at remote points which are not train order offices or where the offices are closed. In order to furnish such work train crews with the necessary orders for the following day it has been the practice for many years to issue form "19" train orders (which do not require the signature of the conductor or engineer) at nearby open train order office, the telegrapher being instructed to place the orders in a sealed envelope and deliver them to a designated train or engine crew for delivery to a designated location where they are picked up by the work train crew when reporting for duty.
On June 18, form "19" train orders were issued by the train dispatcher to the telegrapher at Cle Elum and Conductor Gardner of train No. 17 was instructed to leave the train orders at Hyak in the waybill box which is located outside the station building and is equipped with a switch lock.

Conductor Gardner presented claim for an additional minimum day's pay at through freight conductor's rate because of having been required to deliver the train orders and leave a register ticket of his train at Hyak, alleging this work was in excess of his regular run and should have been performed by others; also, that he should not have been required to leave a register ticket of his own train, and that the register ticket should have been included with the train orders contained in the envelope.

The claim for an additional minimum day is based on current Conductors' Schedule Article 10, Rule 11-(a), reading:

"Services rendered by regularly assigned conductors in excess of their regular runs, will be paid for at regular rates for class of service rendered. Earnings of regularly assigned passenger conductors under this rule may be used to make up money monthly guarantee."

This rule has been incorporated in the same language and form in all agreements since the first schedule became effective on Lines West, and the instant claim is the first presented by a conductor or trainman as the result of delivering train orders at an outlying point, although this practice has always been followed as necessary under operating rules similar or identical to Operating Rules 217, 217-(A) and 217-(B) (Carrier's Exhibit "A").

Moreover, Article 10, Rule 11-(a), does not provide the measure of payment even though service in excess of the regular assignment, as contemplated by the rule, is performed. The rule specifies only that such service "will be paid for at regular rates for class of service rendered." There is no requirement in this rule that under any circumstances a minimum day must be paid even though service is rendered in excess of the regular assignment. In fact, in the case of passenger conductors, when service in excess of the regular assignment actually is performed, Article 10, Rule 8-(c), specifically covers, the rule reading:

"Passenger conductors required to do work not incidental to their train will be paid for time held in addition to time or miles on trip at one-eighth the daily rate per hour."

With regard to the contention that the register ticket of train No. 17 should have been included in the envelope with the train orders: If something had occurred which would have prevented train No. 17 from reaching Hyak, such as an engine or equipment failure, or had it been necessary to detour the train from Easton, an intermediate point between Cle Elum and Hyak, because of a track obstruction, the envelope containing the orders could have been turned over to some other crew or a section foreman, signal maintainer or lineman to be delivered by motor car or highway vehicle, in which case it would not have been proper for the work train crew to be furnished a register ticket showing that No. 17 had reached Hyak. It was, therefore, necessary that conductor Gardner leave the register ticket for his own train at Hyak upon reaching that point.

The only possible basis on which it could be contended that the requirement in this instance was not properly the duty of a conductor is that in some manner the work performed was within the scope of, or in violation of, the agreement with the Order of Railroad Telegraphers' Agreement, the following is quoted from the Findings in National Railroad Adjustment Board Third Division Award 1096:

"It must be concluded, therefore, that in so far as Rule 217 of the Rules and Regulations of the Transportation Department, or the
practice thereunder upon which the carrier relies, applies to points which are not telegraph or telephone offices, it is not in conflict with the Agreement; but that in so far as it applies to points at which telegraph or telephone offices are closed, without regard to the availability of the operators, there is such a conflict and the express provisions of the Agreement must prevail.” (Emphasis supplied).

Hyak was not a telegraph or telephone office and, therefore, in accordance with the express conclusions of the Third Division, the handling was not in conflict with the Telegraphers' Agreement, and it would necessarily follow it was a duty properly required of, and devolving upon, conductors.

The Carrier maintains this claim is an attempt to collect an exorbitant penalty which is not justified or supported by any rule or agreement and should be denied.

All data submitted herewith in support of the Carrier's position has been presented to the employees or their duly authorized representative.

(Exhibits not reproduced).

FINDINGS: The First Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended, and that this Division has jurisdiction.

Hearing was waived.

There is nothing contained in the agreement which would expressly prohibit the conductor from performing the work complained of, nor is there by implication or past practice a reason shown why this Board should sustain this instant claim.

The practice of having the conductor deliver train orders in such a case had been followed for many years and we look to past practice in cases of ambiguity and instances where a rule is not set out in full detail.

The Committee alleges that the sealed envelope containing train orders should have been considered railroad mail and handled by the baggageman. Even if this were so the conductor, being in charge of the train, could have delegated the task of handling the envelope to the baggageman and thus relieved himself from this duty which he alleges was wrongfully assigned to him.

AWARD: Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
BY ORDER OF FIRST DIVISION

ATTEST: (Signed) J. M. MacLeod
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1951.