

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC LINES IN TEXAS AND LOUISIANA
(Texas and New Orleans Railroad Company)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Lines in Texas and Louisiana (T&NO) that:

1. Carrier violated the agreement between the parties when on Saturday, December 12, 1959, it required and permitted an employe not subject to the agreement to handle train order at Staples, Louisiana.

2. Carrier shall compensate Osa Orum, Agent-Telegrapher, Logansport, Louisiana, in the amount of a day's pay (8 hours).

EMPLOYES' STATEMENT OF FACTS: The agreement between the parties effective December 1, 1946, and other supplementing agreements are available to your Board and by this reference are made a part hereof.

Staples, Louisiana, is located on the Shreveport Subdivision of the Houston Division. This subdivision extends from Lufkin, Texas to Shreveport, Louisiana, a distance of 114.5 miles. Train No. 218 is a third-class train, a local freight, operating eastward over this subdivision daily except Sunday. Train No. 143 is a second-class freight train operating westward over this subdivision daily. Train No. 143 is superior by class to Train No. 218. On this subdivision there are eight offices where telegraphers are employed. The telegraphers' positions are filled at all of these offices where telegraphers are employed. The telegraphers' positions are filled at all of these offices Mondays through Fridays, but on Saturdays and Sundays only two offices are open, Lufkin at the west terminus of the subdivision and Shreveport at the east terminus.

On Saturday, December 12, 1959, Conductor Stephens, in charge of Train No. 218, handled (received, copied and delivered) the following train order at Staples:

"TRAIN ORDER NO. 367 Dec. 12, 1959.
TO C & E No. 218
AT Staples
NO. 143 Wait at Jordan until 9:01 P. M. for No. 218
Made Complete 7:22 P. M. Condr. Stephens—SSW"

phers, whether it be by virtue of Rule 17(A) or the Scope Rule, there would have been no necessity for proposing any revisions whatsoever. Then, when they did make any proposals, such were directed to Rule 17(A), which is recognition the Scope Rule did not give the exclusiveness which Petitioners now contend it has.

CONCLUSION: The Carrier has shown that this claim is without merit and should be declined because:

1. There has been no rule violated.
2. There is no rule or past practice to support the claim.
3. There has been a Train Order Rule in the Conductors' Agreement while nine Telegraphers' Agreements have been negotiated and when Telegraphers' Train Order Rule re-adopted.
4. Practice of employes other than telegraphers handling train orders has been in effect on this Carrier for more than 50 years, as more fully set forth in Carrier's submission in Third Division Docket TE-7181, resulting in denial Award 7953 which is fully controlling in this case.
5. That the Organization has unsuccessfully made strenuous efforts on repeated occasions to obtain, through negotiations, a rule which it would need to support this claim. They are again seeking, as they did in Award No. 7953, to secure a rule through the medium of an interpretation by the Board which they have consistently been unable to obtain through negotiations; that the ORT has been able to get sustaining awards on similar claims on other carriers based on rules and practices in effect which were substantially the same as those this Organization sought on this property but did not obtain.
6. That this all makes it clear that the employes seek a new rule (which they have not been able to secure by negotiation) which is not a function of the Board to grant under the provisions of the Railway Labor Act.
7. That awards of the Third Division dictate a denial award in this case.—Awards 2817, 4104, 4259, 4791, 5079, 6071, 6487, and many others, including 7953, a denial award on this property.

For the reasons shown, this claim is entirely devoid of merit and validity, and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claim arose because a conductor used a telephone, at a location where no telegrapher was employed, to receive a train order from the train dispatcher.

Telegraphers claim "exclusive" contractual right to the communication of train orders system wide.

In Award No. 7953, involving the same parties, issues and Agreement, and basically the same factual situation and arguments, we held that Telegraphers do not have the "exclusive" right which is now again claimed. That Award is incorporated herein by reference thereto.

Telegraphers contend that Award No. 7953 is palpably wrong for the following reasons:

1. The Board erred in interpreting the Scope Rule, which is general in nature, in the light of custom and practice on the Carrier instead of industry wide custom and practice;

2. The Board failed to give full consideration to Rule 17(B) and Rule 17(G) which were added to the train order Rule (Rule 17(A)) in the current Agreement;

3. The Board made an erroneous finding that train service employes only occasionally telephoned dispatchers for train orders from locations at which no telegraphers were employed; and

4. The Award, unless set aside, opens the door to the eventual elimination of all telegraphers.

We will discuss each of the four foregoing points in order.

POINT 1

This Board, since its inception, has considered hundreds of cases involving interpretation of scope rules in Telegraphers' agreements, similar or identical to the one in the instant case. From this experience the Board is cognizant that there is no industry wide uniformity of custom and practice as to work exclusively assigned to telegraphers; and, this is true of train orders as well as other work.

The custom and practice test applied in Award No. 7953 is in accord with a preponderance of Awards of this Board involving the issue of exclusive right to certain work under a general in nature scope rule.

POINT 2

That the Board considered Rule 17, in its entirety, is apparent from a reading of pages 158 and 159 in Volume 76 of our printed Awards. The Board, in effect, rejected Telegraphers' argument that this Rule is evidence that the communication of train orders is exclusively reserved, system wide, to telegraphers under the Scope Rule. We, expressly, so hold.

POINT 3

Telegraphers' charge that the Board considered the alleged violation as a "single incident." The sentence in the Opinion that gives rise to the assertion must be read as a whole. It reads:

"We take pains to add that this case involves a single incident and a long continued practice, and that we decided no more than is before us." (Emphasis ours.)

As to the "long continued practice," the Opinion spells it out:

"The record shows that on this Carrier, for the last 40 or 50 years . . . employes other than telegraphers have received, on various occasions, train orders at stations where no telegrapher was employed, in circumstances similar to those in the case before us."

The foregoing quotations dispel the charge.

POINT 4

Assuming, *arguendo*, that the fear expressed in this Point is well founded, this Board is not a proper forum in which to seek a remedy.

The Board is a statutory body of limited jurisdiction. It may only interpret and apply collective bargaining agreements negotiated and executed by the disputants. It may not insert in such agreements its sense of equity or economic and labor relations predilections. Where the parties to an agreement, or one of them, find it wanting, recourse lies in the collective bargaining procedures prescribed in The Railway Labor Act.

CONCLUSIONS

We find that Award No. 7953 is not palpably wrong; and, therefore it is binding precedent. We will deny the 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 Employes involved in this dispute are respectively Carrier and Employes 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of April 1965.