

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dozier A. DeVane, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE CHICAGO, ROCK ISLAND AND PACIFIC
THE CHICAGO, ROCK ISLAND AND GULF RYS.

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Chicago, Rock Island and Pacific Railway that the regularly assigned agent-telegrapher at DeVall's Bluff, Arkansas be paid a call under the call rule of the Telegraphers' Agreement for each day on which track supervisors procured at that point over the telephone from the telegrapher at Mesa, Arkansas, line-ups giving the position of trains, communications of record they were required to have before occupying the main track with the cars assigned to them for use in the performance of their duties as track supervisors."

EMPLOYES' STATEMENT OF FACTS: "The Order of Railroad Telegraphers and the Chicago, Rock Island and Pacific Railway Company have an agreement covering wages and working conditions for employes shown in the scope rule thereof, and DeVall's Bluff, Arkansas, agent-telegraph position is listed in the wage scale on page 40. The hours of duty of the incumbent of this position on August 1, 1936, and thereafter, were from 8:00 A. M. to 5:00 P. M. less a meal hour. August 1st, 1936, the Carrier employed two track supervisors, or inspectors, whose hours of duty started at 7:00 A. M., and as the agent's hours of duty did not begin until 8:00 A. M., a telephone was installed on a telegraph pole just outside of the depot telegraph office and these supervisors or inspectors required to copy their own daily line-ups, including Sundays and holidays, from the telegrapher at Mesa, Arkansas, a telegraph office approximately ten (10) miles from DeVall's Bluff, Arkansas. A sufficient number of Telegraphers' Agreements have formerly been furnished to the Board. The Telegraphers claim that this is a violation of their agreement because it shifts the duties and responsibilities of a telegrapher to employes not covered by their agreement, thereby denying the agent-telegrapher at DeVall's Bluff, Arkansas, earnings under the call and over-time rules of the Telegraphers' Agreement, Article 4-(b) and (c)."

CARRIER'S STATEMENT OF FACTS: "On August 24, 1936, a telephone was installed at DeVall's Bluff, Arkansas, and track supervisor and section foreman when necessary used the telephone from the time it was installed until November 15, 1937, calling the telegrapher at Mesa and securing line-up of trains from him. This line-up generally secured about 7:00 A. M., when agent not on duty at DeVall's Bluff."

An Agreement bearing date of January 1, 1928 is in effect between the parties.

"In keeping with this Award 684, and Article 6-(h) of the Telegraphers' Agreement, which specifies that claims shall be presented within a period of thirty days, there is no dispute in this instance.

"The telegrapher at Mesa did actually give information to the Track Supervisor and Section Foreman, which is strictly in keeping with the desire of the employees that telegraphers handle such communications.

"The call rule of the telegraphers' agreement was not violated at DeVall's Bluff during the period mentioned in the claim because the management did not require the agent-telegrapher to perform work under that rule, and we contend that there is no article in the telegraphers' agreement that has been violated because the employees in question used a telephone line from DeVall's Bluff to Mesa, a distance of two miles, to secure information from a telegrapher actually on duty. No information was secured to advance trains or secure train orders; no agent or telegrapher was deprived of work because Track Supervisor and Section Foreman secured certain information from the operator at Mesa; Track Supervisor and Section Foreman are not train or engine service employees, and no train orders were secured. If train orders had been secured, then, of course the employees would be protected by Article 1-(b) of the Telegraphers' Agreement.

"In view of the facts as stated above, and particularly Award 684 of your Board, claim should be denied."

OPINION OF BOARD: The claim in this case is that the regularly assigned Agent-Telegrapher at DeVall's Bluff, Ark., be paid a call under the call rule of the Telegraphers' agreement for each day on which track supervisors procured at that point over the telephone from the telegrapher at Mesa, Ark., line-ups giving the positions of trains. The information in question was secured each morning by the track supervisor before the telegrapher reported for work. There is some conflict in the record as to the period of time the practice was followed. Both parties agree that it began about August 1, 1936. Petitioner contends it continued until about January 1, 1938, while carrier states it was discontinued about November 15, 1937.

It is apparent that this case involves the same question as was dealt with in the preceding Award No. 941 and consequently will not be repeated here. The cases are similar with respect to the facts. See also Award Nos. 604 and 919.

Claim in this case was not filed until May 31, 1938, which was several months after the practice of which complaint is made had disappeared and carrier contends the claim is barred by Article 4, Paragraph (e) and Article 6, Paragraph (h) of the agreement reading as follows:

"ARTICLE 4 (e) Overtime Tickets. Overtime will not be allowed unless overtime tickets, are forwarded to the Superintendent within forty-eight (48) hours from the time the service is performed. If not allowed, reason will be given."

"ARTICLE 6 (h) OTHER GRIEVANCES. Other grievances will be taken up with the proper officials within thirty days; otherwise, redress in such cases will be waived."

The claim in this case is for a call and not for overtime actually worked and Article 4 (e) is clearly not applicable. It applies only in those cases where overtime "service is performed."

There is conflict in the decisions of this Division as to whether rules similar to Article 6, Paragraph (h) constitute cut-off rules or should be limited to discipline cases. In Award Nos. 417 and 595 they were held to constitute cut-off rules, while in Award Nos. 444, 529 and 535, a contrary conclusion was reached. Award Nos. 417 and 444 involved the same rule

and the conflict in these cases is irreconcilable. Despite that in each instance the claim was made and prosecuted by the General Committee of the Brotherhood, emphasis was placed upon this fact in Award No. 444. In Award No. 595, which reaffirmed and followed Award No. 417, the claim arose on the lines of a different carrier (Northern Pacific Railway Company) and was presented by the employe affected, although no point is made of this fact in the opinion. Award Nos. 529 and 535 involved the same rule here under consideration. An analysis of these several opinions leads to the inescapable conclusion that each case must be governed by its own facts and governing rules.

Article 6 (h) requires that grievances must be taken up with the proper officials within thirty days, otherwise **redress** in such cases will be waived. In Award No. 595 it was pointed out that rules of this character do not bar complaints at any time concerning continuing violations of agreements, that they merely limit the retroactive reparations that may be allowed. In the instant case the practice of which complaint is made had disappeared more than thirty days before the claim was filed and without deciding whether Article 6 (h) would operate as a cut-off rule against a claim for a continuing violation, as that question is not before us in this case, the Board holds that it does operate as a bar to this claim where the cause for complaint had disappeared more than thirty days before the complaint was filed. See Award Nos. 684 and 863.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe 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 claim is barred by Article 6 (h) of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of September, 1939.