

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

John W. Yeager, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILWAY COMPANY

(Norman B. Pitcairn and Frank C. Nicodemus, Jr., Receivers)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Wabash Railway that the assigned telegrapher at Karnes, Illinois, shall be paid under the rules of the telegraphers' agreement for a call for each occasion since November 1, 1940, on which, at time of day when his telegraph office was closed, he has not been brought on duty to handle train orders delivered to trains at his station by employes not covered by the telegraphers' agreement.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of October 16, 1927, as to rules of working conditions, and August 1, 1937, as to rates of pay, is in effect between the parties to this dispute. The telegrapher position at Karnes, Illinois, involved in this dispute, is covered by said agreement, with assigned hours 1:00 P. M. to 10:00 P. M. with an hour allowed for meals.

Effective at least on November 1, 1940, and continuing daily thereafter except on Sundays and holidays, the Carrier transmitted a train order to the telegraph operator at Litchfield, Illinois, during the morning, addressed to trains at Karnes, Illinois, care of Yardmaster Dressen at Litchfield, for delivery by Yardmaster Dressen to the trains addressed.

Yardmaster Dressen's place of employment was at Karnes. He lived at Litchfield, a distance of approximately ten miles from Karnes, and transported himself between these points by means of his own automobile. On each week-day morning beginning at least on November 1, 1940, and continuing until March 20, 1941, Yardmaster Dressen was required or permitted by the Carrier to pick up all train orders issued at Litchfield and addressed to trains at Karnes in his care, and carry them to Karnes where he delivered the orders to the trains addressed.

POSITION OF EMPLOYEES: The following rules of the prevailing telegraphers' agreement are invoked in this dispute:

"Rule 1.

"(a) Following rules and rates of pay shall apply to all telegraphers, telephone operators, agents, agent-telegraphers, agent-telephoners, towermen, levermen, block operators and car distributors, whose positions are shown in the sub-joined wage scale, who shall hereinafter be considered as employes covered by this agreement.

When consideration is given to that fact, and the further fact that the employes involved have not at any time submitted a time report or made a claim account of the yardmaster performing the service in question during the period November 1, 1940 to March 19, 1941, both inclusive, it is obvious that the alleged claim set up in the committee's ex parte statement of claim is irregular and out of order.

Attention of the Board is also invited to the fact that the telegraph operators employed at Karnes during the period November 1, 1940 to March 19, 1941, both inclusive, did not leave notice of their whereabouts in the office as provided by the Note following Rule 1, Paragraph (c), of the Telegraphers' Schedule. Therefore, would not under any circumstances be entitled to compensation even though a train order had been copied at Karnes during the period they were not on duty.

But regardless of the fact that the telegraph operators at Karnes did not post a notice in the window of the telegraph office as provided by the Note following Rule 1, Paragraph (c), the alleged claim set up in the committee's ex parte statement of claim is without foundation under the plain language of that rule.

The telegraph operators employed at Karnes during the period in question were not notified or called to perform work not continuous with the regular work period on any date during the period in question. Therefore, would not be entitled to compensation under the provisions of that part of Rule 5, Paragraph (b), quoted in the carrier's statement of facts.

The conduct of the parties in the application of Rule 1, Paragraph (c) for approximately 19 years shows definitely and positively that the alleged claim referred to herein is without basis under the rules of the Telegraphers' Schedule.

The submission of the alleged dispute referred to herein to the National Railroad Adjustment Board is without question an attempt on the part of the committee to modify the rules of the Telegraphers' Schedule, and in a manner contrary to the provisions of Section 6 of the Railway Labor Act.

The foregoing statement on the merits is without prejudice to the position of the carrier that the alleged dispute referred to herein is not properly before or subject to a decision by the National Railroad Adjustment Board.

OPINION OF BOARD: The claim here is by The Order of Railroad Telegraphers on behalf of the telegrapher at Karnes, Illinois, against the Receivers of the Wabash Railway Company, for an alleged violation of rules of the prevailing Telegraphers' Agreement. The rules to be considered in this controversy are parts of Rule 1 and of Rule 5. They are:

"RULE 1.

"(a) Following rules and rates of pay shall apply to all telegraphers, telephone operators, agents, agent-telegraphers, agent-telephoners, towermen, levermen, block operators and car distributors, whose positions are shown in the sub-joined wage scale, who shall hereafter be considered as employes covered by this agreement."

"(c) No employe other than those covered by this agreement and train dispatchers, will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available, or can be promptly located, except in an emergency, in which case the telegrapher will be paid for a call. Train dispatchers will report to the Chief Dispatcher all orders so issued and the telegrapher entitled to the call will be notified."

"RULE 5.

"Employes notified or called to perform work not continuous with the regular work period, or continuous with, but in advance of the regular work period, will be allowed a minimum of three (3) hours

for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

The period covered by the claim is from November 1, 1940, to March 9, 1941. At the Karnes office one telegrapher was employed during the period involved here whose assigned hours were from 1:00 P. M. to 10:00 P. M. Karnes was the terminus for a coal mine run and of a tri-weekly local freight train, and was slightly less than ten miles from Litchfield, Illinois. During periods when no telegrapher was on duty at Karnes the train dispatcher issued train orders to the telegrapher at Litchfield addressed to train crews at Karnes. These orders were in turn delivered to the Karnes yardmaster who lived at Litchfield who, in his turn, delivered them to the train crews at Karnes. Such orders were not handled in any sense through the Karnes office or by the telegrapher at that point.

On a fair application of Rule 1 (c) to the facts, it was the duty of the carrier to cause the train orders in question to be handled by the telegrapher at Karnes, unless the telegrapher by his own failure to perform the duties required of him forfeited the right to handle them. This is the view taken in at least a dozen other previous awards wherein we find were presented similar situations.

If the telegrapher forfeited his right to receive calls it was because of failure to comply with note appended to (c) of Rule 1, as follows:

"Note: The telegrapher will leave notice of his whereabouts in his office window and in event such notice is not posted, or the telegrapher is not available or cannot be promptly located, as provided in this rule, he will not be entitled to pay for a call."

From the record it appears that the requirements of this note were not complied with by the telegrapher, at least not at all times. But in this case that failure may not be considered important.

From the entire record we have a right to assume that the practice adopted by the carrier for Karnes did not depend upon the failure of the telegrapher to leave notice of his whereabouts in the window, but upon expediency and convenience of the carrier in the handling and transmission of orders to train crews at Karnes.

We hold, therefore, that the telegrapher did not forfeit his right to be called, and that the claim should be sustained.

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 Telegraphers' Agreement was violated as claimed.

AWARD

The claim is sustained, and the Telegrapher shall be paid for a call for each instance covered by the claim when train orders were delivered to the Karnes, Illinois yardmaster at Litchfield, Illinois and delivered by him to train crew or crews at Karnes.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 21st day of May, 1942.