

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna & Western Railroad Company, that C. Gratton and other employes who have occupied the ticket agent position at Dover, New Jersey, subsequent to January 20, 1941, be paid for one hour each day at the rate of the position because meal periods were not allowed in accordance with the provisions of Rule 6-(a) of the telegraphers' agreement.

EMPLOYES' STATEMENT OF FACTS: There is in effect and in evidence, copies of which are on file with the National Railroad Adjustment Board, an agreement between the parties bearing effective date of May 1, 1940.

At page 18 of the telegraphers' agreement referred to next above, the following positions coming thereunder, and rates of pay as of that date, are listed:

| | | |
|------------------------|----------|---------|
| DOVER: Ticket Agent | \$186.20 | per mo. |
| Freight Agent | 200.20 | per mo. |
| Towerman, first trick | .78½ | per hr. |
| Towerman, second trick | .78½ | per hr. |
| Towerman, third trick | .78½ | per hr. |

These rates of pay increased in accordance with the provisions of the wage agreement of December, 1941.

The ticket agency is at one location, the freight agent at another location, and the tower at still another location. The ticket agency is a one-shift office, the freight agency is a one-shift office and the tower is a three-shift office.

Bulletin No. 288 on or about January 10, 1941, advertised the ticket agent position. Bulletin No. 291 dated January 20, 1941, assigned the position to the senior qualified applicant, Mr. C. Gratton. Bulletin No. 288 specified the assigned hours, rate of pay and a meal period, but no specific time for the latter.

Bulletin No. 378 dated April 20, 1942, advertised the same position as temporary, assigned hours 6:00 A. M. to 3:00 P. M., rate \$210.53 per month and a meal hour not provided for.

Bulletin No. 4 dated January 21, 1943, advertised the same position as permanent, assigned hours 6:00 A. M. to 3:00 P. M., one hour for meal, rate \$210.53 per month, without stating a specific time for meal.

There was no change made in the assigned hours of the position when Gratton was assigned to the job, previous incumbents having bid in and worked the job under the same conditions without protest.

In Awards 1289, 1806, 1811 and 2137 your Board has taken the position that "repeated violations acquiesced in by employes may bring into operation the doctrine of estoppel." Or, as stated in Docket No. 1811, "After their initial protest, for a period of almost thirteen years they acquiesced in procedure adopted by the Carrier, and thereafter up to the time of filing this complaint made but feeble protest. During all this time three new agreements were negotiated in which no settlement of this particular matter was sought. Under well recognized principles, they are now estopped to claim that the agreement has been violated."

The Carrier contends that the same principle, except as to violation of any agreement, is presented here and that the claim should be denied.

OPINION OF BOARD: This claim is for pay for one hour each day that the ticket agent at Dover was not allowed a meal period (sixty consecutive minutes) between four (4) hours and thirty (30) minutes and six (6) hours and thirty (30) minutes after starting work, in accordance with the provisions of Rule 6 (a).

It is shown that for a period of time train schedules prevented the agent taking sixty consecutive minutes for his meal but effective October 1, 1943 he was allowed a meal period in conformity with Rule 6 (a).

Based on the facts and circumstances of this case, the claim should be sustained for the period April 30, 1942 to October 1, 1943.

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 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 the claim will be sustained for the period April 30, 1942 to October 1, 1943 in accordance with the Opinion.

AWARD

Claim sustained to the extent indicated in the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of April, 1944.