

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

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

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna & Western Railroad, that:

(a) The Carrier violated Rule 2 of the Telegraphers' Agreement when on March 6, 1930, it assigned and continues to assign the agent-operator position at Avoca, New York, to intermittent service—(9:00 A. M. to 12:00 noon; 1:00 P. M. to 5:30 P. M. and 8:15 P. M. to 9:15 P. M.)—on week days.

(b) The Carrier violated Rule 11 of the Telegraphers' Agreement when on March 6, 1930, it unilaterally suspended and continues to suspend said agent-operator position from service 5:30 P. M. to 6:00 P. M., week days.

(c) The Carrier violated Rule 5 of the Telegraphers' Agreement when on March 6, 1930, it disallowed and continues to disallow call payments for services rendered 8:15 P. M. to 9:15 P. M., week days, and

(d) The Carrier shall now retroactively pay the incumbent agent-operator from March 6, 1930, the difference between what he is entitled to under the applicable rules of the Agreement and what he was actually paid.

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

Effective March 6, 1930, following the abolishment of a clerk-operator position at Avoca, New York, the Carrier instructed the agent-operator to work, week-days, 9:00 A. M. to 12:00 noon, 1:00 P. M. to 5:30 P. M. and 8:15 P. M. to 9:15 P. M.; Sundays he was assigned only two Calls, one to meet trains No. 28 and No. 15, the other to meet train No. 10. The rules, applicable in the instant proceedings, were the same prior and subsequent to May 1, 1940.

POSITION OF EMPLOYEES: The following letter was directed to agent-operator J. E. Donnely under date of March 4, 1930 by the then Superintendent, Mr. W. G. Alexander. Copies were furnished to EBM, JLM, DAE, GDK, and AHM, who were officers or subordinate officers of the Carrier:

This Board has held that "Repeated violations acquiesced in by the employees may bring into operation the doctrine of estoppel or there may be a bar of laches."

Further, this Board has held in Award No. 1289 with Referee Rudolph, that where there has been such an extended delay the Carrier is justified in believing the employees have concurred in an arrangement, the claim should be denied.

This Board has also held in Award 2137, Referee Thaxter—

"Wages are not accepted over a long period of time without protest if an employee believes that he is not receiving what is due him. Employees should not permit an employer to continue in the belief that the agreement has been complied with and then after a long lapse of time enter a claim for accumulations of pay."

OPINION OF BOARD: Based on the facts and circumstances of this case, claim for additional pro rata compensation for two hours fifteen minutes for each week day, holidays excepted, should be sustained for the period July 11, 1944, to and including September 30, 1944.

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 employees involved in this dispute are respectively carrier and employees 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

Claim for additional pro rata compensation for two hours fifteen minutes for each week day, holidays excepted, will be sustained for the period July 11, 1944, to and including September 30, 1944.

AWARD

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 6th day of March, 1945.