

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Luther W. Youngdahl, Referee

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 and Western Railroad Company, that Clerk-Operator V. R. Reynolds, regularly assigned at Sherburne, N. Y., with hours 2:30 P. M. to 10:30 P. M., shall be paid for a call under Rule 5 of the Telegraphers' Agreement account the conductor of Extra 1257 South copying train order No. 102 at Sherburne at 1:43 A. M. on December 15, 1943, at a time of day when Clerk-Operator Reynolds was not on duty and was not used to perform this work that was his.

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.

On December 15, 1943, at 1:43 A. M., train order No. 102 addressed to C. & E. Extra 1257 South at Sherburne was transmitted directly to Conductor Thomas, in charge of Extra 1257, by the train dispatcher. Prior and subsequent to, and on December 15, 1943, the assigned hours of the telegraph schedule employees at Sherburne were:

Agent-Operator	8:00 A. M. to 4:00 P. M.
Clerk-Operator (1st trick)	6:30 A. M. to 2:30 P. M.
Clerk-Operator (2nd trick)	2:30 P. M. to 10:30 P. M.

On December 15, 1943, and for at least fifteen years prior thereto, V. R. Reynolds, for whom this claim is made, maintained and now maintains a telephone in his home; his name was and is listed in the local directory, he is personally known to the telephone operators (switchboard operators), and he was available for call service.

POSITION OF EMPLOYES: As indicated in the Employees' Statement of Facts, at 1:43 A. M. December 15, 1943, train order No. 102, reading:

"Order No. 115 of December 15th is annulled. Engine 1257 run extra Sherburne to Norwich,"

addressed to C. & E. Extra 1257 South at Sherburne, was transmitted by the train dispatcher directly to Conductor Thomas. On December 15, 1943, as further indicated hereinbefore, the carrier maintained telegraph (telegraph and telephone synonymous) service at Sherburne continuously from 6:30 A. M. to 10:30 P. M., Clerk-Operator Reynolds, second trick, having been released from duty at 10:30 P. M., December 14th. Moreover, Reynolds has maintained a telephone in his home for at least fifteen years, his name is

In the instant case, the conductor accepted an order in emergency to progress his train to the next open telegraph office. Surely, it was not the intent of the rule that the conductor shall be reclassified as coming within the range of the Telegraphers' agreement.

There is no rule in the agreement between this Railroad and the Telegraphers prohibiting the delivery from a dispatcher to a conductor or a trainman in emergency, because of no available operator, of an order either verbal or written advancing a train to the next open telegraph station, nor is there any rule or precedent for paying an operator under the "Call" rule in case this is done.

Furthermore, the operator for whom claim is made had closed the station without complying with that part of Transportation Rule No. 743 reading:

"When leaving office where there is no relieving operator they must place card in window showing where they can be located."

Nor did the dispatcher know how or where he could be contacted. This estops the claimant in this case.—Award 7369, First Division.

UB-22 has important cars of war material, dairy and farm products for Main line connecting trains and the delay that would have resulted had an attempt been made to locate the operator would have been of serious consequence.

In Third Division Award 749, also Award 1166, in which the Board outlines its position at some length, and in numerous other Awards, covering claims involving train orders handled by other than telegraphers,—claims having in some cases been for a "call" and others for a minimum day's pay—the affirmative Awards have in all cases been based on a rule in the individual schedules providing that "in which case the telegrapher will be paid for a call."

There is no such rule in our agreement with the Telegraphers' organization—nor have we knowledge of any similar claim having been paid on this property.

The Carrier, therefore, contends that the claim is without merit and should be denied, for the reasons that:

First: There is no rule, practice or precedent to support the claim—

Second: The situation that prompted the claim was an emergency involving serious delay to an important freight train and fully justified the action taken by the conductor and by the train dispatcher.

Third: In this particular instance, the claimant himself contributed to the situation by his utter disregard of an important rule, the consequences of which might have had far more serious results—and a claim that he now be paid for the equivalent of three hours work, during a period when off the property and beyond reach or call, is to say the least somewhat out of order.

OPINION OF BOARD: Carrier contends that claim should be denied because there is no specific rule justifying its allowance, such as existed in the many other cases where awards have been sustained by this Division. It asserts, further, that the Scope Rule, (Rule 1—Scope), relied upon by Organization, merely classifies employees and does not specifically obligate Carrier to pay for services performed by one not within the classification.

Employee insists that under the Scope Rule, Carrier is prohibited from permitting service to be rendered by anyone not within class without subjecting itself to payment as here claimed.

This issue has been ably and exhaustively presented by both sides but we find it unnecessary to determine it in the instant case due to the conclusion reached on another issue hereinafter discussed.

Concededly, employe violated Rule 743 of Transportation Rule of Instructions which reads as follows:

"When leaving office where there is no relieving operator they must place card in window showing where they can be located."

Employe here, left the office at 10:30 P. M. where there was no relieving operator, without placing a card in the window. That the placing of the card in the window is considered of some import was indicated in 2873. The claim there was sustained, there being no rule violation as here involved, but the Board (Referee Shake) pertinently observed:

"That the claimant could have been located cannot be doubted since he was at home, and had posted his address at the places customarily used for that purpose." (Emphasis supplied.)

The purpose of this rule seems quite obvious. It is to enable those (including conductor in this case) who have reason to contact operator, to do so as quickly and expeditiously as possible. Moreover, its purpose is to avert the very thing which might have happened here had not conductor acted without delay. UB-22 contained important cars of freight loaded with war materials and perishables, including dairy and farm products, and delay might have had serious consequences as UB-22 had this freight for main line connection at Binghamton.

When conductor arrived at Sherburne without seeing card in window, he could reasonably conclude that operator was unavailable for a call and was justified in calling dispatcher for orders.

Assuming therefore, without deciding in this case, that there was a violation of the Scope Rule, operator by his own conduct placed himself beyond the pale of a justifiable claim for compensation.

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

That employe violated 743 of Transportation Rule of Instructions and is precluded from claiming additional compensation.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of March, 1945.