

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 and Western Railroad that Agent J. E. Donley or any others who have occupied the agency at Avoca, New York, May 1, 1940 to July 31, 1944 inclusive be allowed one hour at pro rata rate for each working day served in that agency account the meal hour on that position assigned during the period named in violation of Rule 6 of the Telegraphers' Agreement.

EMPLOYES' STATEMENT OF FACTS: There is in effect and in evidence an agreement, bearing effective date of May 1, 1940 between The Order of Railroad Telegraphers and the Delaware, Lackawanna and Western Railroad Company (hereinafter referred to, respectively, as the "Organization" and the "Carrier"); copies of which are on file with the National Railroad Adjustment Board.

Avoca, New York, is a one-shift office, listed at page 25 of the Telegraphers' Agreement, rate of pay there shown 70½¢ per hour. Said rate increased by 19¢ per hour pursuant to the national wage agreements of 1941 and 1943.

For the period of time May 1, 1940 to July 31, 1944, inclusive, the agent at Avoca had a starting time of 9:00 A. M., week-days, and a meal hour 12 o'clock noon to 1:00 P. M. Effective August 1, 1944, the meal hour allowance was changed to between 1:30 P. M. and 2:30 P. M.—the starting time continued.

The Organization filed claim for payment under the provisions of Rule 6 of the Telegraphers' Agreement for the meal hours worked May 1, 1940 to and including July 31, 1944. The Carrier denied the claim, although it does not deny the proper application of Rule 6.

POSITION OF EMPLOYES: As indicated in its Statement of Facts, the Organization informs the Board that from May 1, 1940 to October 1, 1944 the assigned hours of the agent-operator at Avoca were 9:00 A. M. to 12 o'clock Noon, 1:00 P. M. to 5:30 P. M. and from 8:15 P. M. to 9:15 P. M., week-days. Except the meal hour was changed from 12 o'clock noon to 1:00 P. M. to 1:30 P. M. to 2:30 P. M. effective August 1, 1944. The matter of suspension from work 5:30 P. M. to 6:00 P. M. and additional work 8:15 P. M. to 9:15 P. M. is now before the Board in Docket TE-2782. The instant dispute concerns only the improper meal hour (12 Noon to 1:00 P. M.) May 1, 1940 to August 1, 1944.

Rules of the Telegraphers' Agreement, applicable in the instant case, are:

"Rule 6—Meal Period

(a) Where but one shift is worked employees will be allowed sixty (60) consecutive minutes for meal between four (4) hours and thirty (30) minutes and six (6) hours and thirty (30) minutes after starting work.

inducing the latter to believe that his conduct is **fully concurred in** and as a consequence he acts on that belief over a long period of time, this Board will treat the matter closed insofar as it relates to past transactions."

Award 2576—Third Div.

Over four years delay in presenting a claim is unjustifiable.

Award 2550—Third Div.

In any event the claim will not be sustained antecedent to the date "the local chairman filed a claim for violation."

See Award 9039—First Division

Award 2550—Third Division

"Employees should not permit an employer to continue in the belief that an agreement has been complied with and then after a long lapse of time enter a claim for accumulation of pay."

Award 2137—Third Division

Since there was no violation of the agreement and even if there was the acquiescence of the claimant precludes an affirmative award, the claim should be denied.

OPINION OF BOARD: The claim is for pay, at pro rata rate, for one hour each day that the Agent Operator at Avoca, New York, 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).

Based on the facts and circumstances of this case, the claim should be sustained for the period July 19, 1944, to July 31, 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

That the claim will be sustained for the period July 19, 1944, to July 31, 1944, 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 22nd day of May, 1945.