Award Number 3115

Docket Number TE-3090

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Luther W. Youngdahl, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD CO.

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Delaware, Lackawanna & Western Railroad, that the Carrier violated Rule 1 and Rule 12-(a) of the Telegraphers' Agreement when on February 3, 1944, it permitted and required an employe at Berwick, Pennsylvania, not under the Telegraphers' Agreement to copy from the train dispatcher by means of the telegraph and personally deliver train order No. 5 addressed to the conductor and engineer of westbound Extra 358 at a time when the telegrapher employed at Berwick was not on duty; and that the telegrapher employed at Berwick shall be paid a call under Rule 5 of the Agreement for the performance of this work that was denied him.

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.

At Berwick Station on the date in question one clerk-telegrapher (telegraph schedule employe) was employed, assigned hours 3:00 p.m. to 12 o'clock midnight, one hour out for lunch.

The agent at Berwick is considered supervisory under Interstate Commerce Commission Ex Parte No. 72—it is not covered by the Telegraphers' Agreement.

On February 3, 1944, 9:50 a.m., said supervisory agent, Mr. Hutchinson at Berwick, was required to handle (copy and deliver) train order No. 5 addressed to C. & E. Extra 358 West at Berwick, the contents of which read:

> "Extra 358 West meet Extra 791 East at Bloomsburg instead of Berwick Yard. This order to Extra 791 East at Bloomsburg."

Clerk-Operator Henry Dalto who occupied the telegraph position at the time and on the date in question was at home subject to be called for such service, and his name and address were posted at the depot. Mr. Dalto has been called on other occasions for similar telegraph service.

POSITION OF EMPLOYES: As indicated in the Employes' Statement of Facts, Berwick Station maintains telegraph service 3:00 p.m. to 12 o'clock midnight, with one hour out for lunch. The agency position occupied by Mr. Hutchinson is outside of the telegraphers' Agreement. Said Mr. Hutchinson was required at 9:50 a.m., February 3, 1944, to copy and deliver train order No. 5, addressed to C. & E. Extra No. 358 West instead of calling Clerk-

Award 2622—Third Division

When it is borne in mind that the Organization is presently attempting to negotiate a rule calling for the payment of a call in cases such as this, there can be no doubt that the proper disposition of this case is that indicated by the Carrier.

A plethora of authority supports the Carrier's position.

See Awards:

Telegraphers: 367, 368, 383, 389, 603, 645, 652, 653, 654, 700, 1008, 1078, 1145, 1290, 1320, 1396, 1397, 1400, 1488, 1553, 1567, 1568, 1606, 1821, 1822, 1876, 2090.

Other Organizations: 196, 405, 481, 615, 635, 782, 806, 877, 890, 947, 948, 1038, 1050, 1116, 1134, 1149, 1217, 1383, 1405, 1406, 1418, 1435, 1458, 1484, 1519, 1554, 1593, 1656, 1694, 1695, 1708, 1841, 1849, 1894, 1991, 1999, 2010, 2011, 2041, 2042, 2089, 2090, 2091, 2121, 2133, 2134, 2138, 2145, 2326, 2334, 2350, 2351, 2355, 2375, 2379, 2449, 2492, 2493, 2548, 2551, 2552, 2567, 2597, 2685, 2693, 2641, 2674, 2676, 2735.

The claim should be denied.

All data submitted in support of the Carrier's position has been presented to the employes and made a part of the particular question in dispute.

Oral hearing is requested.

OPINION OF BOARD: This is a companion case to TE-3089 Award No. 3114, and what we there said with reference to the work of copying train orders by employes not within the scope of the Agreement, applies with equal force here and need not be repeated.

However, the facts differ in this case as to the availability of employe to receive the call. The employe in the instant case lives approximately one and one-half miles from the office where he is employed and has no telephone in his home. True, employe asserts that he had previously been called on neighbor's 'phone but the possibilities of delay in Carrier attempting to reach employe through this method are obvious. While it may be disputed that an emergency existed, we do not believe employe has shown availability so as to render Carrier liable for a call under the circumstances of this case.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 1st day of February, 1946.