Award No. 3364
Docket No. TE-3392

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred W. Messmore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY

BUFFALO AND EAST

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers, New York Central System, Buffalo and East that the Telephoner-Leverman assigned to or occupying Signal Station 46-A is entitled under the rules of the Telegraphers' Agreement to a call payment each instance since October 1, 1942, a Telegrapher-Leverman at Signal Station 46 has been required, at the time of day when SS-46-A was closed to go from SS-46 to SS-46-A and perform identical duties as are performed by the employe occupying SS-46-A when the latter office is open.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, bearing effective date of January 1, 1940, as to rules of working conditions, and January 1, 1946, as to rates of pay, is in effect between the parties to this dispute.

Prior to July, 1932 three telephoner-levermen, under the said Telegraphers' Agreement, occupied as many positions covering the twenty-four hour period at Signal Station 46-A, Buffalo, N. Y. On July 5, 1932, these three positions were declared abolished by the Carrier.

Effective October 1, 1942, one telephoner-leverman position was reestablished at Signal Station 46-A, assigned hours 11:00 A. M. to 7:00 P. M. Effective July 28, 1943, the assigned hours were changed to 11:45 A. M. to 7:45 P. M.

Commencing October 1, 1942, and continuously thereafter the Carrier has required a regularly assigned Telegrapher-Leverman at Signal Station 46, during the time that the one Telephoner-Leverman at SS-46-A is off duty, to proceed to Signal Station 46-A, and perform service identical to that performed by the Telephoner-Leverman at Signal Station 46-A during his assigned hours.

Signal Station 46 is a continuously operated signal station employing three Telegrapher-Levermen, except it is inoperative in each instance and for the duration one of the Telegrapher-Levermen thereat is required to perform Telephoner-Leverman service at Signal Station 46-A.

POSITION OF EMPLOYES: As indicated by the Employes' Statement of Facts, prior to July, 1932, three eight-hour telephoner-leverman positions, covering the twenty-four period, were operative at Signal Station 46-A. Effective July 5, 1932, all three positions were declared by the Carrier to be

forms some work. Claimant employe was neither notified nor called and performed no service outside of his regular tour of duty on the days involved in his claim.

It is therefore clear and apparent that the rules cited by the employes do not support the claim.

As hereinbefore shown, the claim for a call payment was first presented in General Chairman Woodman's letter of March 17, 1945, Carrier's Exhibit 4, but notwithstanding this fact, claim is presented for "a call payment each instance since October 1, 1942," etc.

This retroactive aspect of the claim violates all rules and principles of employe-management relations and is unethical as well as improper.

CONCLUSIONS

1. There was no violation of any provisions of the agreement when the three positions at SS-46-A were abolished in 1932.

2. The employes recognized the propriety of the present arrangement for almost 13 years before they presented the present claim.

3. The claim is not supported by any rule of the agreement.

4. Management made every reasonable effort to adjust the salaries of the employes at SS-46 in conformity with the provisions of Rule 20.

5. The employes rejected settlement offers and discontinued negotiations for settlement on this basis.

6. The employes are seeking through the medium of a decision of the Adjustment Board a rule or provision to cover such a situation, which is equivalent to adding a new rule to the agreement.

7. The claim should be denied on the ground that it is not supported by the rules and is totally lacking in merit.

OPINION OF BOARD: The record discloses that Signal Stations 46 and 46-A are approximately a quarter of a mile distant and located in the vicinity of Buffalo, New York. From April 15, 1928 until July 5, 1932, both plants were run continuously, operated by three telephoner-levermen assigned to each tower. The three positions at SS-46-A were abolished on July 5, 1932, and thereafter the telegraphers assigned to SS-46 were required to go to SS-46-A when any train movement required the operation of switches and signals at the latter point. A new agreement was negotiated effective January 1, 1940. The positions at SS-46-A do not appear therein.

On July 31, 1942, the General Chairman presented a request for additional help at SS-46 or 46-A, or an adjustment in the rates of pay. On October 1, 1942, the Carrier re-established one position at SS-46-A with hours from 11:00 A. M. to 7:00 P. M. On January 3, 1945, the General Chairman requested that the rate of pay of telegrapher-leverman at SS-46 should be adjusted upward or three full tricks be assigned to handle the work at SS-46-A. On March 17, 1945, the General Chairman claimed violation of Rule 5 and Rule 12 of the Telegraphers' agreement and made claim for a call payment for the leverman at 46-A for each occasion a telegrapher-leverman assigned at SS-46 was required to go to SS-46-A. On April 7, 1945, the Carrier desiring to close the question made an offer to pay the employes at SS-46 one dollar ($1.00) per hour for any tour of duty during which they would be required to go to SS-46-A in connection with movements at that point. The offer was rejected. It was again renewed on March 25, 1946 and again rejected.

The Carrier's position is that under the foregoing facts, it is apparent that the Organization did not regard the situation as constituting a violation of the agreement; that practically 13 years after the initial arrangement became effective the General Chairman charged a violation of Rules 5 and 12 as presented in the instant claim.

Rule 12 provides:

"Except as provided in Rule No. 11, regularly assigned employes will receive one day's pay within each twenty-four (24) hours, according to location occupied or to which entitled, if ready for service and not used, or if required on duty less than the required minimum number hours as per location, except on regular relief days and holidays.

"This rule shall not apply in cases of reduction of forces nor where traffic is interrupted or suspended by conditions not within the control of the carrier."

Rule 5 provides:

"Employes notified or called to perform work not continuous with the regular work period will be allowed a minimum of two hours at time and one-half for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed thereafter on the minute basis."

It will be observed in an analysis of the facts that there was an endeavor by both the Carrier and the Organization to negotiate an adjudication of this matter on the property by what might be termed an equitable basis suitable to the parties. These negotiations continued from July 31, 1942 up to and including March 17, 1945, when this claim was instituted. True, there was a lapse of time when apparently the Organization had acquiesced in the handling of this work, but that time was prior to the period of actual negotiations between the parties to adjudicate the handling of the work.

Under the facts and circumstances of this case we do not believe the Organization can be charged with such dilatory tactics that would constitute an abandonment of the claim, nor by attempting to negotiate with the Carrier on an equiable basis should the Organization be deprived of pressing claim under the rules of the effective agreement between the parties. We hold in the light of the record that the Carrier violated Rule 12 and Rule 5 of the Agreement, as contended for by the Organization and the claim should be sustained.

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 Agreement was violated as alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1946.