

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Ernest M. Tipton, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on Missouri Pacific Lines in Texas and Louisiana that Telegrapher Elizabeth B. Thompson be paid one call account train order No. 102 copied by train crew of Passenger Extra 389 west at Gordon about 1 A. M. June 27, 1944.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties effective October 15, 1940 is on file with the National Railroad Adjustment Board.

About 1:00 A. M. June 27, 1944, the train crew of passenger Extra 389 West copied train order No. 102 at Gordon, Louisiana. Gordon is a part time office and no employe covered by Telegraphers' Agreement was on duty.

Telegrapher Elizabeth B. Thompson made claim for one call under the provisions of Rule 13-g.

Claim was denied and the grievance has been appealed through the regular channels as provided for in the schedule agreement.

POSITION OF EMPLOYES: Telegrapher Thompson is entitled to payment as claimed. The history of the case is outlined by the correspondence which we quote in part:

E. B. T.

"7/8/44

Attd. I do not find anything in your contract to substantiate this claim.

E. N. M."

"DeQuincy, La., July 17, 1944

Mr. R. C. Musgrove
Local Chairman
Opelousas, La.

Dear Sir:

On June 27 an order was issued to crew on Passenger Extra 389 West, at Gordon at about 12:50 or 1:00 A. M. for which I put in claim for call and was informed by Mr. Malone that 'I do not find anything in your contract to substantiate this claim'.

It is my understanding that when an order is copied at a station by the crew the operator is entitled to the call although Mr. Malone seems to think otherwise.

in giving the order to the Conductor of that train. Consideration of this fact emphasizes the impracticability of the Employees' contention that Operator Thompson should have been given a "call" for the purpose of copying the order given Passenger Extra 389 and, consequently, supports the position of the Carrier that the claim presented for a "call" in favor of Operator Thompson is without basis and should, therefore, be denied.

With respect to the provisions of Paragraphs (g) and (i) of Rule 13 (quoted in Carrier's Statement of Facts) on which the Employees rely in support of their claim, it is the position of the Carrier that the situation here involved was an emergency such as to justify giving the order to the Conductor of Passenger Extra 389 at Gordon thereby eliminating 33 minutes delay to that train at Gordon waiting for Train No. 10. However, assuming, but denying, that the situation here existing was not an emergency such as contemplated in Paragraph (g), that rule also provides that "if operator is available he will be paid for a call." In this connection the Carrier has shown that the operator was not on duty, that she had completed her tour of duty at 11:00 P. M. and at the time the order in question was given to the conductor of Passenger Extra 389 at Gordon at 1:01 A. M. was at her home in DeQuincy, 7 miles away, and could not have made herself available at Gordon to copy the order until about 2:15 A. M. at which time, of course, the order would have been useless, as the purpose of the order was to permit Passenger Extra 389 going to DeQuincy for Train No. 10, which it did and arrived DeQuincy at 1:12 A. M. Under these circumstances it cannot properly be contended that Operator Thompson was available within the meaning and intent of Paragraph (g), Rule 13.

If the operator had been available at Gordon to copy Train Order No. 202 at the time it was issued to the Conductor of Passenger Extra 389 West the operator would have been given a call for that purpose; and under those circumstances, had the operator not been given a call the Carrier would have paid claim submitted therefor.

Paragraphs (d) of Rule 13 (quoted in Carrier's Statement of Facts) provides that "Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours work or less, * * *." For reasons explained above Operator Thompson was not called at 1:00 A. M. on the date in question to go to Gordon for the purpose of copying the train order taken by conductor of Passenger Extra 389 at that point.

When consideration is given to all the circumstances involved in this case, the desirability of avoiding unnecessary delay to the Troop Train operating as Passenger Extra 389, the unavailability of Operator Thompson for the purpose of copying the order in question to enable Passenger Extra 389 going to DeQuincy for Train No. 10, together with the provisions of Rule 13, it is clearly evident that the claim presented for a "call" in favor of Operator Thompson is without justification or merit and should, therefore, be denied.

OPINION OF BOARD: On June 27, 1944, Mrs. E. B. Thompson was assigned as second trick operator at Gordon, Louisiana, working 3:00 P. M. to 11:00 P. M. No operator was assigned to work the third trick 11:00 P. M. to 7:00 A. M., during which time the station was closed. Mrs. Thompson resided at DeQuincy which is located 7.3 miles from Gordon. Following completion of her tour of duty at Gordon at 11:00 P. M. on the date in question, Mrs. Thompson returned to her home at DeQuincy.

The Dispatcher knew at 12:40 A. M. that Eastbound train No. 10 would be late and would not reach Gordon until 1:40 A. M., and that Passenger Extra 389 West would have to wait at Gordon for approximately 42 minutes unless he could get a train order to the Passenger Extra to run against No. 10 to DeQuincy, so he gave an order to the Passenger Extra to proceed to DeQuincy. It is the contention of the employees that the Agreement was violated by giving the order to the Conductor, that Mrs. Thompson should have been called to receive this order.

Employees rely on Rule 13-(g) and 13-(i), which read as follows:

"(g) Only in the event of accident or similar emergency will an employee other than covered by this agreement be permitted to receive train orders at telegraph or telephone offices where an operator is employed. If operator is available he will be paid for a call."

"(i) Train dispatchers will not be required nor permitted to transmit train orders or handle block by telephone or telegraph direct to train and engine service employees, except in emergency; nor will train and engine service employees be required or permitted to take train orders or to block, or report, trains by telephone or telegraph, except in emergency. Emergency is defined as follows: Casualty or accident, engine failure, wreck, obstructions on track through collision, failure of block signals, washouts, tornadoes, slides or unusual delay due to hot box or break-in-two that could not have been anticipated by dispatcher when train was at previous telegraph office, which would result in serious delay to traffic."

The real question for us to determine is: Was Mrs. Thompson available to receive this call? Mrs. Thompson was at her home when it became known that the order had to be issued. She had a telephone in her home and this fact was known to the Dispatcher. If he had called her promptly she would have had time to drive to the station at Gordon and take this train order. For the Carrier to say that she was probably in bed and would have had to dress and therefore was not available is mere speculation. Under the above quoted rule it was the duty of the Carrier to call her, and then if she refused to make the call the Carrier would have complied with the rules. It follows that 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 employee involved in this dispute are respectively carrier and employee 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 Carrier violated the Agreement as contended by the Employees.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1947.