

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

H. Nathan Swaim, 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 K. K. Skelton regularly assigned agent-telegrapher at Phelps, Texas, hours 9:00 A. M. to 5:00 P. M., including a meal hour, shall be paid for call, under the provisions of Rule 13-(h) of the telegraphers' agreement, on September 6, 8, 15, 20, 22, 25, 27, 29, October 4, 6, 11, 13, 16, 18, 20, 23, 25, 1945, on which days train orders and/or clearance cards were copied by a telegrapher at Conroe, Texas, and sent for delivery to trains at Phelps, and on September 12, 19, 21, 24, 26, 28, October 1, 3, 5, 8, 10, 12, 15, 17, 1945, on which days train orders and/or clearance cards were copied by a telegrapher at Trinity, Texas, and sent for delivery to trains at Phelps, all at a time when the agent-telegrapher was not on duty.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date October 15, 1940, as to rates of pay and rules of working conditions is in effect between the parties to this dispute.

Phelps, Texas, is a train order office and is covered by the said agreement. K. K. Skelton was the regular assigned agent-telegrapher at Phelps during the period involved in this dispute, with hours 9:00 A. M. to 5:00 P. M. including a meal hour.

Rule 13-(h) of the prevailing telegraphers' agreement provides as follows:

"When orders and/or clearance cards are copied at one point and sent for delivery to a train at a point, where telegraph or telephone service is maintained, the employe at such point will be paid for a call."

On the days specified in our claim train orders were copied by telegraphers at Conroe, Texas, (a point 28 miles south of Phelps), and/or at Trinity, Texas, (a point 18 miles north of Phelps), and sent for delivery at Phelps, where telegraph service was maintained, and at times when agent-telegrapher was not on duty.

Claims for a call under rule 13-(h) of the telegraphers' agreement was made for each of these days on which train orders were copied at Conroe and/or Trinity and sent for delivery at Phelps where telegraph service was maintained. The Carrier declines to pay these claims.

POSITION OF EMPLOYES: The following quoted rule of the telegraphers' agreement is invoked in this dispute:

The following is quoted from Employees' Statement of Facts in Award No. 1168:

"On April 29, 1938, and immediately prior thereto, Mobest employed two telegraphers, assigned hours 9:00 A. M. to 5:00 P. M. and 7:00 P. M. to 3:00 A. M. providing sixteen hours telegraph and train order service. Effective April 30, 1938, as a result of a force reduction, Mobest employed one telegrapher, assigned hours 6:00 P. M. to 3:00 A. M. (one hour for meal) providing eight hours telegraph and train order service. 'PO' office, Phoenix employs two telegraphers, assigned hours 7:00 A. M. to 3:00 P. M. and 3:00 P. M. to 11:00 P. M. on week days, and 7:30 A. M. to 9:30 A. M. and 3:00 P. M. to 6:45 P. M. on Sunday and holidays, providing sixteen hours telegraph and train order service on week days. During the period May 4, 1938 to July 6, 1938, both inclusive, forty-six (46) train orders were transmitted to telegraphers at Phoenix on forty-six different occasions (outside the assigned hours of the telegrapher at Mobest) addressed to train crews at Mobest, and delivered that location by agent at Phoenix, who is not covered by the Telegraphers' Schedule."

It is obvious from the above that the circumstances in the above case are not similar to the circumstances involved in the instant case and, therefore, that Award has no bearing on and does not support the contention of the employees.

As indicated in Employees ex parte Statement of Claim, the claim here presented is for a 2-hour call at the time and one-half rate in favor of Agent-Telegrapher at Phelps on 31 dates in September and October, 1945, representing a total amount in money of \$84.63.

The Carrier has no record of employees having previously submitted a claim in favor of an operator for a call under the circumstances existing in this case, notwithstanding the fact that, as previously stated, it is the general practice to issue train orders to crews in advance of the time and point where such orders are to be executed. Neither has the Carrier been able to find where your Honorable Board has previously been presented with a contention and claim similar to the one here involved.

In the foregoing the Carrier has conclusively shown that Rule 13 (h), which the Employees allege has been violated, has not only not been violated but that rule has no application whatever under the circumstances existing in this case. It has also been shown that none of the Awards cited and relied upon by the Employees in their handling of this case with the Carrier covers situations similar to the case under consideration and accordingly none of those Awards supports the contention and claim of Employees. It is the position of the Carrier, therefore, that the contention of the Employees should be dismissed and the accompanying claim denied.

OPINION OF BOARD: That part of Carrier's main line here in question extends from Palestine on the North to Houston on the South. At Phelps, Texas, the Carrier has a short branch off of its main line extending West to Huntsville. Telegraph service at Phelps was not continuous. At Trinity, North of Phelps, and at Conroe, South of Phelps, there was a telegrapher always on duty.

On certain occasions trains from Palestine to Huntsville were given orders for execution at Phelps which were copied and delivered at Trinity and in the same manner orders were copied and delivered at Conroe to trains from Houston to Huntsville.

This claim is for pay for calls for the agent-telegrapher at Phelps under Rule 13 (h) of the current Agreement which provides:

"When orders and/or clearance cards are copied at one point and sent for delivery to a train at a point, where telegraph or telephone service is maintained, the employee at such point will be paid for a call."

Both the Organization and the Carrier have cited Awards of this Board involving factual situations somewhat similar to the situation here but in none of those cases was there the same Rule which we are here considering. The Rules in all those cases provided that employes other than those covered by the Telegrapher's Agreement and Train Dispatchers should not be permitted to handle train orders at telegraph or telephone offices where an operator is employed and available except in cases of emergency, in which case the telegrapher shall be paid for the call. In the application of those Rules to similar factual situations we have conflicting awards.

The Rule with which we are here confronted seems more clear and definite than the Rules involved in those other Awards.

Rule 13 (h) provides two conditions on which this claimant, the agent-telegrapher at Phelps, must be paid for a call.

First, the orders and/or clearances must be copied at another office than Phelps. That was done here. The orders were copied either at Trinity or Conroe.

Second, those orders, copied at Trinity or Conroe, must be "sent for delivery to a train at" Phelps.

This second condition is not met by the facts in this case.

When the Rule speaks of "delivery to a train" it can only mean for delivery to the persons who are in charge of the train. Here the persons in charge of the trains passing Trinity and Conroe and to whom the orders were delivered were the same persons who were in charge of the trains to which the orders pertained and the same persons who were to execute the orders concerning those trains at Phelps. Their orders were not "sent for delivery to" Phelps. They were delivered to the proper persons at Trinity and Conroe and retained by those persons for execution at Phelps.

There is no provision in the Rule requiring the orders to be delivered at the point where the orders are to be executed. This seems to have been recognized by the parties since there was no objection by the Organization to the subsequent practice initiated by the Carrier of having the train-dispatchers give these train running orders through from Palestine and Houston to Huntsville.

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 Carrier did not violate the Agreement.

AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of February, 1948.