

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK CENTRAL RAILROAD
(BUFFALO AND EAST)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Buffalo and East, that

- (a) The Carrier violated the rules of the Telegraphers' Agreement and notice and Order No. 1 and Notice of Instructions of Federal Manager C. H. Buford of Government Controlled Railroads of May 17, 1946, when and because on May 24 and/or 25, 1946, said Carrier declared abolished the positions of and suspended from service, without pay, L. E. Lasher, S. W. Taylor, et al, and
- (b) In consequence thereof, L. E. Lasher, S. W. Taylor, et al, shall now be allowed their earnings which would have accrued had they not been suspended.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties, herein referred to as the Telegraphers' Agreement, bearing effective date of January 1, 1940, (except as to subsequent wage adjustment), is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The Carrier suspended from service L. E. Lasher, S. W. Taylor, et al, without pay, from their positions—declaring said positions abolished—on May 24 and/or 25, 1946. Said Carrier has continuously since declined to pay such employees for the lost, suspended or locked out days, except Carrier has offered to reimburse only those employees who filed individual time slips, but has declined to recognize the Organization's claim that "all employees adversely affected" shall be likewise reimbursed; and, in addition, Carrier has declined to check its records, jointly or unilaterally, to definitely determine the names of the adversely affected employees, and the exact number of days or hours involved.

POSITION OF EMPLOYEES: As indicated in the Employees' Statement of Facts, the Carrier on May 24 and/or 25, 1946, declared abolished the positions held by L. E. Lasher, S. W. Taylor, et al, thus suspending said employees from service without pay. Displacement rights in the exercise of seniority were not permitted.

Supporting its claim, the Organization cites and makes a part hereof:

- 1. Rules 9, 12 and 28-(a) and (d) of the Telegraphers' Agreement.
- 2. Statement by the President.

"Rule 6-(c) of the parties' effective agreement provides:

'Regularly established daily working hours will not be reduced below eight (8) hours per day, six (6) days per week, except that this number of days may be reduced in a week in which holidays occur by the number of such holidays.'

"The record does not bring the Carrier's action within the exception and consequently what was done was in violation thereof."

The guarantee rule in the above mentioned case provides for regular daily working time of 8 hours per day, 6 days per week, and the exception applies only where a holiday occurs. The Carrier's action in the dispute covered by Award 3715 did not come within the exception, which action consequently was considered a violation. In the instant case, Carrier's action does fall within the exception and consequently what was done was not a violation.

CONCLUSION

In the opinion of Carrier, the dispute here before your Board is fully covered by Rule 12, and denial of the claim is further substantiated by Opinion of the Board in Award 3715.

For the reasons set forth above, the Carrier respectfully requests the Third Division to deny the claim of the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim on behalf of Lasher, Taylor, et al, is presented without claimants being otherwise identified by petitioner. The claim is too broad and not susceptible of ascertainment.

The Carrier furnished the Board with the names of eight employees, in addition to Lasher and Taylor, who filed claim for one or two days. The Carrier offered to pay the claims of these ten employees and also the incumbents of eleven other positions of which there was a claim of record, but the Organization refused the offer.

Based on the facts and circumstances of this case the Carrier's offer was fair and reasonable and the claim should be disposed of by payment to the incumbents of the twenty-one positions included in the Carrier's offer.

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 disposed of in accordance with the Opinion.

AWARD

Claim disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 8th day of October, 1948