

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, Buffalo and East that Mr. W. R. McDaniel regularly assigned to the third trick telegraph position at Orangeburg, New York, be compensated under the provisions of Rule 13 of the Telegraphers' Agreement because he was required or permitted to perform relief service at Weehawken, New Jersey, May 11th through May 28th, 1943.

EMPLOYES' STATEMENT OF FACTS: An agreement between the parties bearing effective date of January 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Prior to May 29, 1943, Mr. W. R. McDaniel was regularly assigned to the 11:00 P. M. to 7:00 A. M. telegraph position at Orangeburg, N. Y. Mr. McDaniel was instructed by the carrier to and did perform relief service at Weehawken, N. J., May 11th through May 28th, 1943. Mr. McDaniel's position at Orangeburg was filled by an extra employe Stephen Horvath. The carrier denied to McDaniel the provisions of Rule 13.

POSITION OF EMPLOYES: As indicated in the Employes' Statement of Facts, Telegrapher W. R. McDaniel prior to May 29, 1943, owned the position as telegrapher 11:00 P. M. to 7:00 A. M. at Orangeburg, N. Y. On May 11, 1943, Mr. McDaniel was required by the Carrier to work the position as telegrapher in "W" Telegraph Office, Weehawken, N. J., filling the vacancy left by Mr. S. S. McDowell who had been assigned to another position on a bid at Halcottville, N. Y. When Mr. McDaniel went to work at Weehawken extra employe Stephen Horvath worked his position at Orangeburg.

Mr. McDaniel traveled to Weehawken each week day on Train No. 40 and returned on Train No. 13. On Sundays he traveled on Train No. 70 to Weehawken and returned on Train No. 69. A total of two hours and 27 minutes travel and waiting time each week day and three hours and 18 minutes each Sunday between the dates shown in the Statement of Facts. The distance on way between Orangeburg and Weehawken is 21 miles.

The claimant did not have a copy of the working contract that was in effect between the Carrier and the Organization and he was not aware at the time that he should have been paid for all travel and waiting time each day he was kept away from his home station and required to work at Weehawken. The Carrier neglected, or avoided advising him of his rights to payments for travel and waiting time for such service and it was not until November 1946 that Mr. McDaniel learned that he had been deprived of

CONCLUSION: The evidence herein presented shows that the claim for travel and waiting time in May 1943 was not presented until December 1946, or approximately 3½ years after the service had been performed, and, therefore, the claim should be denied under the doctrine of laches.

OPINION OF BOARD: The claim in this case is presented on behalf of a telegrapher who, during a period of two and one-half weeks, was diverted from his regular third trick position and used elsewhere. He had to travel 21 miles to the location of the temporary assignment. He was not paid for either travel or waiting time as he did not claim such pay on the daily time record forms. This omission was apparently an oversight on the employees part as Rule 13 of the agreement plainly provides that regularly assigned employees who are temporarily diverted to other locations "will be paid * * * for waiting and travel time from home station to relief point and return * * *." The Carrier concedes that he would have been paid for waiting and travel time under this provision if he had entered claim on his daily time record. It is obvious that this claim does not involve the interpretation of a rule but only the question of whether the waiting and travel pay should be allowed. Taking into account all the circumstances in this particular case, the Board decides that the waiting and travel time shall now be paid.

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 waiting and travel time will be paid.

AWARD

Claim sustained.

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.