

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**LeRoy A. Rader, Referee**

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**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,  
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood that the Carrier violated the Clerical Agreement when it failed to call Clerk C. A. Lawhorn to perform service on position of Lightweight Checker, 4:00 P. M. to 12 Midnight, February 5, 1947, rate \$7.75 per day, and that the Carrier shall now be required to compensate Lawhorn for its failure to call him on this date.

**EMPLOYEES' STATEMENT OF FACTS:** There has been in existence at Russel, Kentucky, since November 1, 1943, an Extra List Agreement providing the manner in which extra work in the Transportation Department will be performed and the procedure through which employees entitled to take assignment on the extra list might do so and their right to work covered by it after being assigned thereto.

On February 5, 1947, Clerk Lawhorn, having previously been assigned to the extra list and standing first out for a call, called the Hump Office (the place previously designated to be called if and when an employee wanted to know how he stood for work) at 2:15 P. M., to find out how he stood to work and was told he was first out.

Clerk J. O. Allen, who was regularly assigned to position of Lightweight Checker in the Transportation Department, 4:00 P. M. to 12 Midnight, rate \$7.75 per day, reported for duty on February 5, 1947, became ill and at 4:10 P. M., it was necessary to relieve him and he was relieved by C. F. Shelton, a Group II employee.

Extra Clerk C. A. Lawhorn, standing first out on the extra list, being qualified and available, should have been called for the vacancy.

A Call Boy is regularly assigned with headquarters at MS Cabin, which is approximately one-half of a mile from the Hump Office, this Call Boy being used to call employees within one mile of the Call Boy's headquarters. Clerk Lawhorn lives about 200 yards from MS Cabin.

**CARRIER'S STATEMENT OF FACTS:** On Wednesday, February 5, 1947, J. O. Allen, who was regularly assigned as Lightweight Checker at Russell, Kentucky, 4:00 P. M. to 12 Midnight, unassigned Monday, reported for duty, but laid off at 4:05 P. M. on account of sickness. At 4:10 P. M., Assistant Chief Clerk Sharp called C. A. Lawhorn, claimant, who was first out on the Clerks' extra list. As no one answered Lawhorn's telephone, the vacancy was filled by Group 2 Clerk C. F. Shelton, who was rearranged to

### CONCLUSION

No rule of the agreement has been violated.

No established practice has been violated.

Carrier acted in good faith in attempting to call Mr. Lawhorn, but as his phone did not answer it was naturally presumed that he was not at home and there was not time to wait and continue calling him.

Every reasonable effort that could logically be expected was made by the carrier to notify Lawhorn.

For the above reasons the claim should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This is a joint submission with separate statements of facts which to some extent are in conflict.

The claim turns on the fact as to whether or not the Carrier made sufficient effort to call claimant employee on the day in question, February 5, 1947. The employee, Clerk C. A. Lawhorn, called the office by telephone at about 2:15 P. M., on this day and was advised that he stood out first for work. He states that he and his wife were at home between 2 and 7 P. M. The record shows that the Chief Clerk made an attempt to call claimant employee at approximately 4 P. M., received no answer and placed another employee in the position to be filled. Thus the claimant went to the bottom of the extra list. Additional statement was filed by wife of claimant that both she and her husband were home at 4 P. M., and that the phone did not ring during the entire afternoon of February, 5 1947 (Carrier points out that this statement was made by Mrs. Lawhorn at a latter date and that there might have been a chance of failure to remember.) The record also shows that there was a Call Boy stationed in MS Cabin about 200 yards from claimant's home. The Carrier contends that there is no evidence that the boy was available at the time in question; that it is not the practice to use this boy in cases where employees have telephones, and that an emergency existed necessitating filling of the position at once. Rules 3 (e) of Agreement of November 16, 1936, and 3 (h) of Agreement of January 1, 1945, relating to establishment of extra board are cited. The application of the rule is not in dispute.

A number of Awards were cited on the burden of proof, contending that when the Carrier attempts to call an employee by telephone it has complied with the Agreement; that the burden of proof rests with the petitioner.

In support of the claim Awards 3485, 3880, and 3882 were also cited.

From the record made in this case it would seem that the employee, having inquired as to his standing within two hours of the time in question, might reasonably be expecting such a call; that on the statement of both he and his wife, he was available, and that the telephone did not ring during the afternoon. By showing he has made out a prima facie case.

The Carrier admits only one attempt was made to reach employee. Telephone service connections are not infallible and additional effort might well have been made. Emergency conditions are not shown to the extent to preclude two attempts to reach employee.

In view of the entire record the claim should be sustained. The Carrier violated the Agreement.

**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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD

By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 29th day of November, 1948.