

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
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 when and because it required or permitted section foremen, or operators of motor cars, to copy train orders at Wallkill, New York, outside the assigned hours of the agent-telegrapher, and

(b) in consequence thereof the Carrier shall be required to pay "call" service (Rule 5 of the Telegraphers' Agreement) to the incumbent of the agent-telegrapher position at Wallkill on each of the days listed in the Employes' Statement of Facts.

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

Wallkill is a one-man station, employing an agent-telegrapher, 7:30 A. M. to 4:30 P. M. (one hour out for lunch) daily, except Sundays.

The Carrier required or permitted section foremen or operators of motor cars at Wallkill, to copy train orders, outside the agent-telegrapher's assigned hours, as follows:

DATE	TRAIN ORDER NO.	TIME	ADDRESSEE	COPIED BY
May 26, 1947	105	6:14 A. M.	TMC-4403	Tubbs, Sec. Fore.
July 21, 1947	104	6:25 A. M.	TMC-4403	" "
July 23, 1947	107	6:24 A. M.	TMC-4403	" "
July 24, 1947	106	6:32 A. M.	TMC-4403	" "
Aug. 1, 1947	107	6:18 A. M.	TMC-4403	" "

The Organization for the incumbent agent-telegrapher filed claim for a "call" payment for each such improperly handled train order. The Carrier denied the claim.

POSITION OF EMPLOYES: Generally, it was during the United States Railroad Administration, because the railroads were directed by one agency, that scope rules were drawn so there would be no overlapping, hence the

3. AWARDS OF THE N.R.A.B., THIRD DIVISION, SUPPORT CARRIER'S DENIAL OF PENALTY PAYMENTS FOR ALLEGED VIOLATIONS PRIOR TO THE DATE THE CONDITION COMPLAINED OF WAS BROUGHT TO THE ATTENTION OF THE SUPERINTENDENT.

Award 463. Claim of gateman employed at St. Paul Union Depot for compensation for all time worked in excess of eight consecutive hours exclusive of the meal period from time of first reporting for duty until final release, **retroactive to April 13, 1933.**

In its opinion, the Board brought out the fact that "this dispute was handled on the property only for the period subsequent to February 1, 1936," and sustained the claims effective from that date.

Award 500. Claim of certain employees in the Mail and Baggage Department of St. Paul Union Depot for a minimum of eight hours' pay each day short shifts were worked, **retroactive to June 12, 1934.**

In its findings, the Board decided, "That the claim of the employees * * * shall be sustained but limited in its retroactive application * * * to February 1, 1936."

Award 540. Claim of a signal maintainer on the Toledo Division of the New York Central Railroad for payment at time and one-half rate for all service performed on Sundays from February 1, 1932 to January 16, 1933 and subsequent to July 1, 1934; also similar claim from another signal maintainer for the period May 20, 1934 to April 30, 1936.

The opinion of the Board reads in part, "In the opinion of the Board the pro rata payment * * * since September 3, 1935 the date when claims were presented in their behalf is in violation of the provisions of Rule 16." (Emphasis added.)

Many other awards could be cited in which your Board has followed the principle of recognizing claims only from the date the claim was first presented to the Carrier.

CONCLUSION

The evidence herein presented conclusively proves that the claim of the Employees prior to November 10, 1947, the date it was first brought to the attention of the Carrier, has no proper standing and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: From May 26, 1947 through August 1, 1947, Carrier required or permitted a section foreman to copy train orders at Wallkill, New York, outside the assigned hours of the agent-telegrapher on five days specified in the claim. For the reasons stated in Award 4281, this constituted a violation of the applicable Agreement.

The claims in this case were not filed until November 10, 1947, although they accrued prior to August 1, 1947. The Carrier promptly took steps to prevent a recurrence of the violation. No claims accrued on or after November 10, 1947. For the reasons stated in Award 4281, claim (b) is denied.

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 Agreement was violated.

AWARD

Claim (a) sustained, and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of January, 1949.