

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 on each week day July 1, 1942 through April 13, 1947, said Carrier permitted or required a section foreman to copy a train order, or train orders, at "JG" Tower, outside of the assigned hours of the telegrapher and

(b) in consequence thereof the Carrier shall now be required to pay "call" service (Rule 5 of the Telegraphers' Agreement) to the incumbent of the telegraph position at "JG" Tower for each such train order copied.

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.

"JG" Tower is a one-man station employing one telegrapher 10:00 A. M. to 7:00 P. M. (one hour out for meal) daily except Sundays.

Each week day July 1, 1942 through April 13, 1947 (the position was declared abolished by the Carrier effective April 14, 1947) the Carrier required or permitted a section foreman at "JG" Tower to copy a train order, or train orders, outside of the telegrapher's assigned hours. For example:

Date	Train Order No.	Time	Addressee	Copied By	Title
Oct. 19, 1946	228	7:37 AM	TMC 4470	Venelli	Sec. Fore.
" 21, "	216	7:28 AM	TMC 4470	"	" "
" 23, "	232	7:30 AM	TMC	"	" "
" 25, "	239	7:41 AM	TMC	"	" "
" 26, "	230	7:36 AM	TMC	"	" "
" 28, "	222	7:37 AM	TMC	"	" "
" 29, "	224	7:28 AM	TMC	"	" "
" 30, "	226	7:40 AM	TMC	"	" "
" 31, "	239	7:57 AM	TMC	"	" "
Nov. 1, "	238	7:46 AM	TMC 4470	"	" "
" 2, "	225	7:57 AM	TMC 4470	"	" "
" 4, "	220	7:40 AM	TMC 4470	"	" "

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 practice of recognizing claims only from the date first presented to the Carrier.

CONCLUSION:

The Carrier has shown that the claim covering the period July 1, 1942 through April 13, 1947 was not submitted until June 25, 1947 and therefore has no proper standing and should be denied. At the same time, the Carrier has conclusively established that the practice complained of has been recognized as being in accord with the unsigned memoranda and not in violation of any rules of the current agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: From July 1, 1942 through April 13, 1947, Carrier required or permitted a section foreman at "JG" Tower to copy train orders outside of the telegraphers' assigned hours on the days specified in the claim. For the reasons stated in Award 4281, the claim is sustained as to all violations occurring on or after October 19, 1946, the date the violation was called to the attention of the Carrier.

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. Claim (b) sustained from and after October 19, 1946.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 1st day of January, 1949.