Award No. 4285
Docket No. TE-4262

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 and continues to violate the rules of the Telegraphers' Agreement when and because on each week day beginning with and since October 1, 1944, said Carrier requires or permits a section foreman to copy a train order, or train orders, at Snow Shoe, Pennsylvania, outside of the assigned hours of the agent-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 agent-telegrapher position at Snow Shoe for each train order so 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.

Snow Shoe is a one-man station employing one agent-telegrapher 8:00 A. M. to 5:00 P. M. (one hour out for lunch) daily, except Sundays.

Each week day beginning with and since October 1, 1944, the Carrier requires or permits a section foreman, or motor car operator, to copy a train order, or train orders, at Snow Shoe, outside of the assigned hours of the agent-telegrapher. For example:

DATE	TRAIN ORDER NO.	TIME	ADDRESSEE	COPIED BY	TITLE
5/16/46	206	6:18 A. M.	TMC 4497	Quick	Section Foreman

The Organization for the incumbent agent-telegrapher filed claim for a "call" payment for each improperly-handled train order. The Carrier not only denied the claim, but declined to jointly check the records with the Organization's representative to determine full and complete facts.

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 various supplements, addenda, interpretations, etc. Supplement No. 13 to

In its findings, the Board decided, "That the claim of the employes * * * 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 practice of recognizing claims only from the date first presented to the Carrier.

CONCLUSION

The Carrier has conclusively established that the practice complained of has been recognized as being in accord with the unsigned memorandum and not in violation of any rules of the current agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: From October 1, 1944, Carrier required or permitted a section foreman or motor car operator to copy train orders, at Snow Shoe, Pennsylvania, outside of the assigned hours of the agent-telegrapher.

For the reasons stated in Award 4281, the claim is sustained as to all violations occurring on or after June 25, 1947, the date the violation was first called to the Carrier's attention. The letters protesting the violations of the rule which are contained in the record are general in character and do not specify or call attention to a violation thereof at Snow Shoe.

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 employes involved in this dispute are respectively carrier and employes 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 June 25, 1947.

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.