

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 May 16, 1946, and each subsequent week day, said Carrier required or permitted a section foreman, or a motor car operator, to copy train order or train orders at Lumber, outside of the assigned hours of the agent-telegraphers, 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 Lumber for each train order so copied.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties, herein known 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.

Lumber, Pennsylvania, is a one-man station employing one agent-telegrapher 9:00 A. M. to 6:00 P. M. (one hour out for meal) daily, except Sundays.

Each week day beginning with and since May 16, 1946, said Carrier requires or permits a section foreman, or motor car operator, to copy train order, or train orders, at Lumber, outside of the assigned hours of the agent-telegrapher. For example:

Date	Train Order No.	Time	Addressee	Copied By	Title
May 16, 1946	212	6:20 AM	TMC 4527	Sheeder	Sec. Fore.
Jan. 13, 1947	217	9:00 AM	TMC		" "
Jan. 17, 1947	228	7:52 AM	TMC		" "
Jan. 18, 1947	225	8:25 AM	TMC		" "
Jan. 23, 1947	223	7:59 AM	TMC		" "
Jan. 24, 1947	224	7:50 AM	TMC		" "
Jan. 27, 1947	214	7:45 AM	TMC		" "
Jan. 28, 1947	225	7:55 AM	TMC		" "
Jan. 29, 1947	224	8:18 AM	TMC		" "

is nothing in the rule that required Carrier to notify or call him on May 16, 1946, and each subsequent week day, and the absence of any claim, protest or complaint is the best evidence that can be supplied that he was not entitled to be notified or called. Claim was never presented by claimant but on June 25, 1947, General Chairman Woodman presented claim to the Superintendent, retroactive to May 16, 1946.

Obviously there is no merit to the claim under Rule 5.

5. AWARDS OF THE THIRD DIVISION, N.R.A.B., SUPPORT THE CARRIER'S CONTENTION THAT NO RECOGNITION SHOULD BE GIVEN TO PRE-DATED CLAIMS.

As indicated above, the claim of the Employes covers the period beginning May 16, 1946, and was not submitted to the Superintendent until June 25, 1947.

The Carrier holds that claims accruing prior to the date they are first presented have no standing and should be denied.

The following awards of your Board support the contention of the Carrier in respect to pre-dated claims:

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 employes 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 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: Each week day since May 16, 1946, Carrier has required or permitted a section foreman or motor car operator to copy train orders, at Lumber, 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 January 15, 1947, the date the violation was first 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 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 January 15, 1947.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tammon
Acting Secretary

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