

Award No. 4373

Docket No. TE-4241

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

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 on the following dates: October 13 and 20, November 3, 8, and 12, 1947, when it permitted or required train service employees who are not under the Telegraphers' Agreement to "OS" (report trains) of which a record is made on the train dispatcher's sheet; and also to fulfill the duties of a Block Operator by use of the telephone at McConnellsville, New York, at a time that the agent-telegrapher was available but not on duty, 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 McConnellsville on each occasion that he was not used.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties hereinafter 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.

McConnellsville, New York, is a one-man station employing an agent-telegrapher whose assigned hours are from 7:00 A. M. to 4:00 P. M., daily except Sunday, with one hour out for lunch.

On the dates shown in the Statement of Claim and subsequent dates at McConnellsville, the Carrier required and/or permitted train service employees who are not covered by the Telegraphers' Agreement to handle and perform work coming under the rules of the Telegraphers' Agreement, such as "OS" of trains and block operator duties outside the regular hours of the agent-telegrapher.

The claimant, Mr. N. M. Backus, was available for the "call" service on the dates in question. His home is located less than 200 feet from the station and he has complied with the Carrier's Operating rule 854 in this respect.

The Organization in behalf of the claimant filed with the Carrier claims for a "call" payment under Rule 5 for each of the Carrier's improper acts. The claim was denied.

of the Telegraphers' Agreement and the "unsigned memorandum". In the first paragraph of the letter of March 30, 1946, claims are made under Rules 1 and 22 of the Telegraphers' Agreement and the "Train Order Memorandum"; also, in the last paragraph, claim that Rules 1, 22 and the "Memorandum dated February 4, 1941" apply. (The correct date is February 5, 1941.)

3. RULE 5, RELIED UPON BY THE EMPLOYEES IN PROGRESSING THEIR CLAIM, IS NOT APPLICABLE IN THIS DISPUTE.

Rule 5, on which the claim is based, reads:

"Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of two hours at time and one-half for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed thereafter on the minute basis."

Said rule by its very language applies to employees who are notified or called to perform work, etc. Claimant employee was not notified to perform work or called to perform work, and in fact he performed no work. There is nothing in the rule that required Carrier to notify or call him on the dates in question. This rule was in effect on February 5, 1941, but the parties did not in any way associate it with matters covered by the unsigned memorandum of understanding.

CONCLUSION

The Carrier has conclusively established that the practice complained of has been recognized as being in accord with the unsigned memorandum of understanding and not in violation of any of the rules of the Telegraphers' Agreement; therefore, the claim should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In October and November, 1947 the Carrier maintained a one man station at McConnellsville, New York, employing an agent-telegrapher whose assigned hours were 7:45 A. M. to 4:00 P. M., daily except Sunday. On five dates specified in claim it is alleged Carrier permitted train service employees to perform the duties of block operator outside the assigned hours of the agent-telegrapher.

For reasons stated in Award 4287 claim for a "call" under Rule 5 of Agreement effective January 1, 1940, should be sustained for each of the five dates specified in claim.

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 claim will be sustained for each of the five dates specified.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of April, 1949.