

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 October 23, 1947, when it permitted or required train service employes 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 telephone at Williamstown, 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 Williamstown, N. Y. on this occasion when 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.

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

At Williamstown, N. Y. on the date shown in the Statement of Claim, the Carrier required and/or permitted a train service employe who is not covered by the Telegraphers' Agreement to handle and perform work coming under the Scope Rule and Train Order Rule of the Telegraphers' Agreement. This employe performed block operator and telephone operator duties as well as the "OS" of trains, outside the regular hours of the agent-telegrapher.

The claimant, Mr. H. J. Pulver, was available for "call" service on the date in question. He has a card in the train dispatcher's telephone booth and the station office showing his place of residence and how he can readily be called at any time of the day or night during a time when the station is closed. He has fully complied with Rule 854 of the Carrier's Operating Rules in this respect.

The Organization in behalf of the Claimant filed with the Carrier claims for a "call" payment under Rule 5 of the Telegraphers' Agreement for this improper act of the Carrier. The claim was denied.

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 nor 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 November 24 and December 10, 1947. 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: The Carrier maintained a one man station at Williamstown, New York, employing an agent-telegrapher whose assigned hours were 7 A. M. to 4 P. M., daily except Sunday. On October 23, 1947, it is alleged Carrier permitted a train service employee to perform the duties of a block operator outside of 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 October 23, 1947.

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 October 23, 1947.

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.