

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: July 16, October 12, 20, 23, 26, November 8, 14, and 18, 1947, when it permitted or required train service employees who are not under the Telegraphers' Agreement, to "OS" (report trains) trains of which a record is made on the train dispatcher's sheet, and to fulfill the duties of a block operator by use of the telephone at Mallory, New York, at times 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 Mallory, N. Y. 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.

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

Prior to June, 1944, twenty-four (24) hour telegraph service was maintained at Mallory. During the month of June, 1944, the second and third trick positions at this station were abolished. Thereafter telegraph service was maintained from 7:00 A.M. to 4:00 P.M.

On the dates shown in the Statement of Claim and on subsequent dates, 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 Scope Rule and Train Order Rule of the Telegraphers' Agreement, such as "OS" of trains, and performing block operator duties outside the regular hours of the agent-telegrapher.

The claimant, Mr. R. G. Herrick, maintains a telephone in his home which is located just 200 feet from the station. If he cannot be located on the telephone his home is within easy walking distance from the station.

At other points, the situation was dealt with by rearranging the assigned hours of telegraphers, working them overtime or calling them out as the circumstances might require to conform with the provisions of paragraph 1 of the understanding.

As evidence that the Telegraphers' Organization recognized the unsigned memorandum of understanding of February 5, 1941, as having force and effect just as though it had been signed, the Carrier will attach as its Exhibits 1 and 2 copies of General Chairman Woodman's letters of June 3, 1942 and March 30, 1946. While the alleged violations referred to in these letters are not before your Board, the Carrier desires to direct the Board's attention to Mr. Woodman's references to the unsigned memorandum of understanding in support of his claims. In the first paragraph of the letter of June 3, 1942, claim is made for alleged direct violations of the scope rule of the Telegraphers' Agreement and the "undersigned 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 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 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: The Carrier maintained a one man station at Mallory, New York, employing an agent-telegrapher whose assigned hours were 7 A. M. to 4 P. M. daily except Sunday. On eight 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 the 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 eight days 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 eight 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.