

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 the scope rule of the Telegraphers' Agreement on each Sunday, August 4, 1946, through November 9, 1947, except on Sundays December 8, 1946, January 5, October 5 and 12, 1947, when it permitted or required train service employees, not under the Telegraphers' Agreement, to block trains and transmit reports of record by the use of the telephone at Ogdensburg, New York, at times the second trick telegrapher-clerk was available but not on duty, and

(b) in consequence of said violation the second trick telegrapher-clerk shall be paid for eight hours at time and one-half rate for each of these Sundays, less payments previously allowed.

EMPLOYEES' 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.

The week-day assigned hours of the second trick telegrapher-clerk, Ogdensburg, N. Y., is 1:15 P. M. to 9:15 P. M., Sunday hours (Call Service) 6:30 P. M. to 8:30 P. M.

Each Sunday August 4, 1946 through November 9, 1947 (except Sundays December 8, 1946, January 5, October 5 and 12, 1947) the Carrier required or permitted train service employees to block trains and transmit messages and/or reports of record by telephone at Ogdensburg, usually between 2:00 P. M. and 4:00 P. M., which times were within the limits of the telegrapher-clerk's week day hours, but ahead of said clerk telegrapher's Sunday (Call Service) hours. The Telegrapher-clerk was available and willing to perform additional "call" service.

The Organization on behalf of said telegrapher-clerk filed claim for eight hours pay at time and one-half rate of each of said Sundays, pursuant to the

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 shown that claim covering the period from June 19, 1946 (later changed to August 4, 1946) through November 9, 1947 was not submitted until November 22, 1947 and therefor has no proper standing and should be denied. At the same time, 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.

Exhibits not reproduced.

OPINION OF BOARD: Each Sunday from August 4, 1946 to November 9, 1947, except for Sundays specifically enumerated, an extra train was run from Ogdensburg, New York, to Philadelphia, New York, and return. The first trick telegrapher was on duty when the extra left Ogdensburg and he handled the block operator duties, the "OS" and other reports of record in connection with its departure. When the train returned in the early afternoon, no telegrapher was on duty at Ogdensburg. The conductor on the extra reported the arrival of the train, clearing the block, the time the crew was relieved from duty, and other information pertaining to the train operation. The Organization contends that the work described, which was performed by the conductor, was telegrapher's work and constituted a violation of the Telegraphers' Agreement.

The reporting of information relating to the blocking of trains, the "OS" and other train reports, are reports of record and constitute telegrapher's work. The use of the telephone in reporting such information is in lieu of the telegraph as it was historically and traditionally used, and, as such, is work reserved to the telegraphers. Award 4516. The fact that the work was performed outside of the working hours of the employees assigned to perform telegrapher work at this point constitutes it no less a violation.

We think the claim is controlled by Award 4287, a case arising on the property of this same Carrier. The facts are so similar that the conclusion there reached controls the decision in the case before us.

Carrier contends that a Memorandum of Understanding of February 5, 1941, is controlling. If this Memorandum of Understanding were binding, the position of the Carrier would be the correct one. But it is not a binding agreement for the reasons stated in Award 4287. See also Award 4281.

On July 1, 1946, a new Rest Day, Sunday and Holiday Agreement became effective. Under Section 2 (b) thereof, Sunday work is compensated at the rate of time and one-half. Award 4574. Consequently, the time and one-half rate is to be applied.

Carrier contends that the claim should be allowed only from the time the claim was filed. The claim was filed on November 1, 1947, and the practice was corrected on November 16, 1947. The claim is not stale. The Carrier was fully aware of the claims of the Organization as is evidenced by other claims made and settlements effected in similar cases. Corrections have been previously made in similar instances and partially made with reference to the situation at Ogdensburg. The delay in making claim has not been unreasonable under the circumstances. The case is not comparable to Award 4281 cited by the Carrier. After a consideration of all the facts and circumstances surrounding the claim, we do not feel that it is one calling for the application of any theory of estoppel or acquiescence. We find no fault with the scope of the 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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1949.