

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware, Lackawanna & Western Railroad Company that R. A. Beach, second trick clerk-operator, Owego, New York, hours 8:00 P.M. to 4:00 A.M., shall be compensated for a call under Rule 5 of the Telegraphers' Agreement on October 9, 1947, when he was not called to complete the handling of Form 19 Train Order No. 2 which had been partially handled by him before going off duty at 4:00 A.M. on this date.

EMPLOYES' STATEMENT OF FACTS: 1. An Agreement by and between the parties, hereinafter referred to as the Telegraphers' Agreement, bearing effective date of May 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

2. Prior to October 1, 1947, Owego maintained 24-hour telegraph and train order service. Effective October 1, 1947, the third trick clerk-operator position was abolished and the two remaining positions were rearranged to cover said telegraph and train order service only between 8:00 A.M. and 4:00 P.M. and 8:00 P.M. and 4:00 A.M.

3. On October 9, 1947, R. A. Beach regularly held Cycle (Relief) Position No. 7 which included an assignment at Owego 8:00 P.M. October 8, to 4:00 A.M. October 9.

4. At 2:36 A.M. October 9, 1947, Form 19 Train Order No. 2 (Employees' Exhibit "A") addressed to Conductor Motor "A" was transmitted to clerk-operator Beach with instructions when he went off duty at 4:00 A.M. to leave said Train Order in telephone box at east end of eastward siding to be picked up by Conductor of Motor "A" when he (the conductor) went on duty at 5:30 A.M. Mr. Beach followed instructions.

5. Clerk-operator Beach was also instructed to leave a Clearance Form "A" (Employees' Exhibit "B") with train order No. 2. To do this Beach necessarily had to improper "time" said Form "A" by showing the time as 5:30 A.M. —a time when he was off duty.

6. The Organization claimed a violation of appropriate rules of the Telegraphers' Agreement and in consequence thereof a "call" payment as provided in Rule 5. The Carrier denied the claim.

POSITION OF EMPLOYES: Preliminary, the Organization directs the Board's attention to Award No. 3670 which disposed of an identical dispute,

management. There is no rule in the agreement upon which the organization may rely to validate a claim such as here presented.

The Organization's statement of claim indicates that R. A. Beach was the regular assigned second trick clerk-operator at Owego, New York, on October 8th and 9th, 1947. The Organization does not deny that R. A. Beach was a cycle relief man.

Mr. Beach worked at Vestal and Waverly in addition to Owego. When Mr. Beach went off duty at 4:00 A.M. on October 9, 1947, his next assignment was that of an operator at Waverly, which is distant approximately eighteen (18) miles from Owego. The hours of the Waverly assignment were 7:00 A.M. to 3:00 P.M. Mr. Beach must then be considered a regular relief employee. Regular Relief positions were created under the agreement of November 20, 1946.

Paragraph 4, Section 2, Agreement of November 20, 1946, reads:

"Time worked before or after the hours of the regular week day assignment shall be paid for in accordance with overtime and call rules."

Rule 4—Overtime—May 1, 1940 Agreement reads:

"Except as otherwise provided, time worked in excess of eight (8) hours, exclusive of meal periods, on any day, will be considered overtime and paid on the actual minute basis at time and one-half rate."

Rule 5—Call Rule—May 1, 1940 Agreement reads:

"Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours 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 on the minute basis."

Carrier contends the rule cited above are pay rules and apply only for work done. Operator Beach was neither called to work nor did he work overtime on October 9, 1947 as claimed.

R. A. Beach was compensated for all work performed on October 8 and 9, 1947.

The Awards cited by Referee Miller in Award No. 3670 are cases in which a train order rule was involved. There was no train order rule involved in Award 3670. There is no train order rule involved here. The agreement of May 1, 1940 contained no train order rule.

The Employees have failed to produce any evidence that the handling of the order in question was handled from the time of its inception to the time it came into the hands of the Conductor on Motor Car "A" by anyone not covered by the Scope Rule, even if the rules required it, which they do not.

The claim should be denied.

There is no proof offered that the claim was authorized by Mr. Beach.

The Carrier therefore raises the question of jurisdiction. (325 U. S. 711)

(Exhibits not reproduced).

OPINION OF BOARD: Claimant held the regular relief position second trick clerk-operator at Owego, New York on Thursdays 8:00 P.M. to 4:00 A.M. Only two shifts were worked at Owego and there was no telegrapher available between 4:00 A.M. and 8:00 A.M. On Thursday, October 8, 1947, an inspection motor car in charge of a conductor tied up for the night at Owego and was to start at 6:00 A.M. Friday to cover the Ithaca Branch on scheduled inspection. At 2:36 A.M. the train dispatcher completed to claimant at Owego a Form 19 train order and clearance addressed to the conductor and operator

of the motor car and instructed claimant to leave the train order and clearance card in the telephone box when he went off duty at 4:00 A.M. There the conductor picked them up when he came on duty at 5:30. Claim for call has been made for denial of claimant's right to deliver the order. At that time there was no train order rule in effect on this property.

In the situation before us, the Train Order was properly sent to and received and copied by a telegrapher at the station where it was to be delivered. No other person handled it. The only ground for objection is that the telegrapher did not hand it personally to the conductor but laid it in a box for him to pick up, pursuant to the instruction of the dispatcher.

It has been settled by a long line of awards that the action here challenged was in violation of the Train Order Rule as customarily worded, but not that it violated the Scope Rule. As said by Referee Carter in Award 2926, "The decision necessarily rests upon the interpretation to be placed upon the words 'to handle train orders' contained in Rule 1 (b)", the Train Order Rule. We concur in the reasoning therein. In that award the referee also said, "A time should come when matters of this kind should be considered as finally settled until such time, at least, as they are changed by negotiation or mediation." That the Train Order Rule rather than the Scope Rule is the basis of such claims as here made is reemphasized in recent Awards 4104, Referee Parker, and 4259, Referee Shake. True, Award 3670, Referee Miller participating, was to the contrary on a claim arising on the property of this very carrier. That award held the Scope Rule rather than the Train Order Rule violated. To reach that conclusion, it relies on Award 3114, which was premised on the sending of a train order by a dispatcher directly to a conductor, and cites as precedent Awards 2928 and 3612, both of which are based without discussion, on prior awards where the Train Order Rule was in effect. An award is no stronger than the reasoning and authority behind it. In the absence of a train order rule in the Agreement at the time the instant claim arose, we think it must be denied.

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 Employee involved in this dispute are respectively carrier and employee 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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of March, 1950.