

Award No. 5178
Docket No. TE-5040

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**CHICAGO, INDIANAPOLIS AND LOUISVILLE
RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Indianapolis & Louisville Railway Company, that

(1) the Carrier violated, and continues to violate the Telegraphers' agreement when it unilaterally suspended M. S. Newgent, the regularly assigned agent-telegrapher at Midland, Indiana, from work during his regular hours June 14 to 19, 1949, inclusive, and on numerous subsequent days; and

(2) M. S. Newgent, the regular assigned incumbent shall be compensated at the established rate of pay for this position for eight hours on each day he was suspended from work during his regular hours.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of September 1, 1948 is in effect between the parties to this dispute. In the schedule of positions and rates of pay attached to and a part of this agreement is the following:

"LOCATION * * *	POSITION	TRICK	HOURLY RATE
I & L Branch			
Midland * * *	Agent-Telegrapher	1st	\$1.37"

The rate of pay as shown was increased 7 cents per hour as of October 1, 1948, as provided by Article 1 of the Chicago National Agreement of March 19, 1949, and adjusted, as provided by Article II, Section 2 (a) of said Chicago National Agreement on September 1, 1949.

Midland is the operating terminus of a branch line known as the I & L Branch, which extends from Wallace Junction, on the main line to Victoria, a distance of approximately 47 miles, reaching and serving a number of coal mines and a considerable area of agricultural territory in southwestern Indiana. A majority of the business handled by the railway at Midland is in connection with the coal mining industry.

On or about June 10, 1949 the coal mines in this territory reduced operation to about three days per week and have operated intermittently since that time.

- (4) That the action and position of the Carrier is sustained by the facts and rules during both periods of time involved; that is between June 14th and July 18th, 1949 and for that period of time subsequent to July 18th, 1949, and this claim should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was the regularly assigned agent-telegrapher at Midland, Indiana. On June 9, 1949, he was notified that he was not to work after June 11, 1949 until further notice. After working a few days intermittently, he was returned to his regular position. On June 23, 1949, he was again notified that he was not to work after June 25, 1949 until further notice. The claim is for the time that claimant was not permitted to work his regular assignment during the period.

It is the contention of the Organization that the position of agent-telegrapher at Midland was not abolished and the claimant is therefore entitled to be paid for the time he lost under the guarantee rule. This rule provides:

"Regular assigned employees shall receive eight (8) hours' pay within each twenty-four (24) hours, according to station occupied or to which entitled if ready for service and not used or if required on duty less than eight (8) hours, except on assigned rest days on positions covered by paragraph (a) of Rule 8 or on Sundays and Holidays on other positions. This rule shall not apply in cases of reduction in force nor where traffic is suspended because of conditions not within the control of the company."

The record shows that Midland is a small yard located at the south end of a branch line of the Carrier extending from Wallace Junction to Midland. The operation of the Midland Yard is dependent solely on business from coal mines located within the switching limits of this yard. When the mines are operating the Carrier maintains one yard engine track at Midland and runs one freight train in and out of that point each day. No passenger service is provided.

On June 13, 1949, the coal miners went on strike and the mines closed down. The result was that the Carrier had no business left on this branch line and it was closed down. Claimant, among others, was notified not to work as we have heretofore stated.

It is clear that claimant's position was suspended and not abolished. It is just as evident that traffic was suspended because of a strike by the coal miners in the mines producing the sole business for this branch line. We have held, correctly we think, that a traffic suspension because of a strike on the railroad is a condition not within the control of the Carrier under similar rules. It will be observed that Rule 10 provides that the guarantees therein contained shall not apply where traffic is suspended because of conditions beyond the control of the company. But such conditions are those which prevent railroad operations by the Carrier. They do not include conditions arising outside of railroad operations which bring about a loss of business. If such was the meaning of the provision, the rule would have little or no significance as any loss of business is generally the result of conditions beyond the control of the Carrier. We conclude, therefore, that the words contained in Rule 10 refer solely to conditions not within the control of the Carrier which prevents traffic from moving on the carrier's road. This being true, the Carrier could not suspend claimant from his position and avoid the effect of the guarantee rule. To accomplish that end, the position should have been abolished. The claim is valid.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon.

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 for wage loss suffered.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

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