

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
THE NEW YORK CENTRAL RAILROAD COMPANY
(Line West)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, West of Buffalo, that:

- (1) The Carrier shall compensate G. W. Ludlam and/or other occupants of the operator position at Alliance, Ohio, on basis of a "call" for each day and for each instance violations occurred during the period October 7, 1948 to and including July 1, 1952, less any payments already made.
- (2) Specific violations and the identity of the employees filling the Alliance operator position during the period involved shall be determined by a joint check of Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: Claimant G. W. Ludlam is the regular assigned telegraph service employee at Alliance Yard Office, a one-man telegraph communication station, open between the hours of 8:30 A. M. and 5:30 P. M. The occupant of this position is subject to be worked overtime in order to protect and perform all of the communications service required at this station at a time outside of these regularly assigned hours.

There is no dispute as to the violation of the Agreement. The Carrier has acknowledged that others not covered by the Agreement performed communications service at a time that telegrapher Ludlam was not on duty and has made payments to Mr. Ludlam for work denied on some sixty-one different occasions for which time slips were presented to the Carrier by claimant.

The specific dispute here involved concerns the claim for payment for all similar violations in addition to the sixty-one the Carrier has paid. The Organization contends that there were many more similar violations at Alliance in addition to the sixty-one the Carrier has acknowledged and paid and that Claimant Ludlam and other relief telegraphers at Alliance are entitled to be paid for the other occasions that work was denied them on each and every occasion that the Carrier required or permitted others than telegraphers to perform communications service at a time the occupant of the telegraph position was not on duty at Alliance between the dates shown in this claim.

The Carrier insists that at the conference, at which time it acknowledged the violation and agreed to settle the claim based on decisions of your Board

OPINION OF BOARD: The docket reflects that the instant dispute was progressed through several discussions and settlement conferences on the property in a form different from that presented to the Board. A careful reading of the docket in light of the difference in facts expressed by the parties leads us to the following conclusions.

The claim was initially progressed only upon behalf of Claimant Operator G. W. Ludlam. At a settlement conference held on April 11, 1952, this Carrier indicated a willingness to settle the claim upon the basis of two recent Awards of this Division on Lines East. It agreed to pay Ludlam, and, in the future under comparable circumstances, the Operator at Alliance would be held on duty after regular working hours or called out and paid under the Call Rule. It had in its file 61 time slips filed by Claimant. The Organization stated that it had in its files 8 to 10 additional claims. We find that the parties contemplated a joint check of records to determine the full extent of the liability to Claimant Ludlam's rights from October 7, 1948 to April 16, 1952.

Later, and under date of June 23, the General Chairman by letter to Carrier took the position that this continuing violation never ceased and demanded a joint check. Sixty-one time claims were paid Claimant in December, 1952. The Organization renewed its demand for joint check for similar violations and that the Carrier make proper payment to the employee who should have been called to perform the work. The Carrier refusing, the Organization progressed the claim to this Board (1) upon behalf of Ludlam and/or other occupants of the operator's position at Alliance, and (2) "Specific violations and the identity of the employees filling the Alliance operator position during the period involved shall be determined by a joint check of Carrier's records."

The above represents a clear broadening of a claim after a settlement conference had led the Carrier to commit itself to liability within ascertainable limits upon the basis of certain of our past Awards. Settlement offers will be discouraged if we were to hold that demands for joint record checks can hereafter be promised upon admissions of violations made for purpose of settlement in a known case where such demand is aimed to reveal possible violations by unnamed parties during the same period.

While the recollections of the parties are in conflict, we have found that a joint check was contemplated to ascertain the correct extent of Carrier's liability to Ludlam from October 7, 1948, to April 16, 1952, and to that extent we believe the request valid and that it should be made.

The agreed to settlement also contemplated a method of handling the problem at Alliance which was to prevail after April 16, 1952. That understanding was not, nor could it be limited to any single employee. It also pertained in express language to the occupant of the position. If an occupant of that position had reason to feel that the Agreement had been violated we would expect him to resort, as Ludlam subsequently did, to the procedures provided by the Agreement, Article 6, for filing time claims. If such claims remained unsettled, they would be the proper subject of a new case but not a continuation of the old.

A prior ruling of particular force in connection with the and/or claims asserted is Award 4117 decided by this Division without a referee. A claim covering ten named employees had been originally filed which related to telegraphers who did not work on stated dates during the May, 1946, strike of certain Train and Engine Service employees. The Carrier offered to close out the entire question by payment of the claims of the named employees as well as any similar claims on file prior to the date of offer. The Organization's submission in that docket reads:

"The above offer was not acceptable to the Organization because it entirely disregarded the Organization's over-all claim of

August 2, 1946, and, further, because it was designed to preclude payments to employees who had not filed individual claims. The Board should keep in mind the Carrier had reason to suspect there were additional suspensions. As a matter of fact the Organization agreed to accept the Carrier's offer if the latter would give assurance that the twenty odd claims constituted **all** of the suspensions. Carrier's representative (Mr. McCarthy) would not give such assurance, neither would he agree to jointly or unilaterally review the superintendents' records. * * *

While the subsequent claim filed with the Board sought to include unnamed employees by term "et al" rather than "and/or" the meaning is, of course, the same. This Division ruled:

"This claim on behalf of Lasher, Taylor, et al, is presented without claimants being otherwise identified by petitioner. The claim is too broad and not susceptible of ascertainment.

"The Carrier furnished the Board with the names of eight employees, in addition to Lasher and Taylor, who filed claim for one or two days. The Carrier offered to pay the claims of these ten employees and also the incumbents of eleven other positions of which there was a claim of record, but the Organization refused the offer.

"Based on the facts and circumstances of this case the Carrier's offer was fair and reasonable and the claim should be disposed of by payment to the incumbents of the twenty-one positions included in the Carrier's offer."

We find no substantial, distinguishing factors present in the instant case which renders inapplicable the holding above and accordingly we deny the and/or claims asserted.

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 claims be disposed of in accordance with the Opinion.

AWARD

Claim (1) sustained only as to G. W. Ludlam in accordance with Opinion.

Claim (2) denied in its entirety.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 9th day of July, 1954.