

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORTHERN PACIFIC RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Northern Pacific Railway Company, that:

1. The Carrier violated the provisions of the Telegraphers' Agreement when and because it required or permitted track supervisor Tietz, an employee holding no rights under said agreement to copy and handle a lineup No. 2 (Form NP 9024) by telephone at Elliston, Montana, on Saturday, November 28, 1953, and on each subsequent Saturday, date to be determined by Carrier records, at a location where an employee covered by the scope of the Agreement is employed, and

2. Mr. L. M. Vick, regularly assigned agent-telegrapher at Elliston, Montana, shall be compensated as provided in Rule 75 of the Agreement of April 1, 1948, for one call for November 28, 1953, and each subsequent Saturday, to be determined by check of Carrier's record, for work denied.

EMPLOYES' STATEMENT OF FACTS: There is an agreement between the parties bearing effective date of April 1, 1948, which, with subsequent amendments, is on file and by reference is placed in evidence as a part of this submission.

Claimant is the regularly assigned agent-telegrapher (and telephoner) at Elliston, Montana. His tour of duty, as fixed by the Carrier, extends from 8:00 A. M. to 5:00 P. M., one hour off for lunch, five days per week, Monday through Friday, with Saturdays and Sundays assigned as rest days. Elliston, Montana is situated on the Rocky Mountain Division of the Railway at a point approximately 29 miles west of Helena, and 22 miles east of Garrison, Montana. Elliston is a one-man station and when Mr. Vick, the claimant, is not on duty the office is closed. His services, however, are always available, and particularly so because he resides in the station building. When communication or other service is required at Elliston outside of the agent-telegrapher's assigned hours of duty the agreement contemplates that he will be subject to duty, and that he will be compensated for same in accordance with

28, 1953. Consequently, Mr. Vick has not qualified for payment under Section II B(2) of Supplement to Decision No. 5.

An examination of the rules cited by the Employees in appealing the claim of Mr. Vick on the property demonstrates the extreme construction placed upon such rules by the Employees. Nowhere in those rules are train line-ups even mentioned. Likewise, nowhere in those rules is there anything that would sustain payment of two hours at time and one-half rate because Track Supervisor Tietz consumed not to exceed several minutes in communicating with a train dispatcher by telephone. The Employees have gone far afield in presenting the claim of Mr. Vick for payment of two hours at time and one-half rate on November 28, 1953.

CONCLUSION

The Carrier has shown that:

1. The rules of the current Telegraphers' Agreement do not delineate the work customarily and traditionally performed by occupants of positions specified therein.
2. By custom and practice various classes of employees communicate with train dispatchers by telephone for the purpose of securing information in connection with train movements.
3. By custom and practice telegraph service employees have not acquired the exclusive right to secure train line-ups by telephone from train dispatchers.
4. The Telegraphers' Agreement was not violated when Track Supervisor Tietz called the train dispatcher from Elliston on November 28, 1953 for the purpose of ascertaining the location of trains.
5. Notwithstanding the evidence in this docket, should this Division find that calling the train dispatcher on November 28, 1953, constituted the removal of work from the scope of the Telegraphers' Agreement, the measure of damages is the amount of work measured in terms of hours removed from the scope of the Telegraphers' Agreement computed at straight time rate.

This claim should be completely denied.

All data in support of the Carrier's position in connection with this claim has been presented to the duly authorized representative of the Employees, and is made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The same basic issue appears in this docket as was in the docket covered by our Award No. 7344 this day decided.

It has been noted in this docket that line-ups were obtained by a Track-Supervisor at the station where Claimant was employed—but while he was not on duty, a distinction which we felt called upon to ignore in Award No. 7344, since no good reason appeared in that docket why the line-up was not obtained at Arlee, as in the past, except the operator was not on duty and the Track-Supervisor was otherwise instructed. The Agent-Telegrapher at Arlee made claim.

The Employees see, and, some Board Awards make a distinction in the matter of reparations, depending upon the work situs, but we have not undertaken to do more in this instance than to decide the dockets before us.

It may appear to be a further departure from Board precedent in the matter of reparations that we are constrained to strictly apply Rule 75

according to its terms and allow the rate of pay therein provided. The Board consistently holds to the doctrine that claims for overtime not worked are not compensable at more than pro-rata, but in the end it is the language of the rule that we must adopt and follow.

Rule 75 provides for minimum compensation in hours and rate of pay and the language of the rule does not admit of any other interpretation. There is no safer course to pursue when it comes to applying a rule than to apply it as the parties would have done had the Board's interpretive powers not been invoked. Although they argue to the contrary in both dockets before us, we feel confident we have arrived at the same basis for paying claims that the parties to the dispute would have employed if they had been in accord on the question of violation.

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. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois this 7th day of June, 1956.