Award No. 8016
Docket No. TE-7292

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna and Western Railroad, that:

(1) The Carrier violated the terms of the Agreement between the parties when on September 3 and 4, 1953, it failed to assign Extra Employe J. M. Carbonero who was the senior, idle, available employe to perform extra work on position of ticket agent-operator at Mountain Station, New Jersey.

(2) The Carrier shall compensate Extra-telegrapher M. Carbonero on the basis of two (2) days' pay of eight hours each at the Mountain Station rate, which is $1.811 per hour, or $28.98.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between the parties effective July 1, 1953, a copy of said agreement is on file with the National Railroad Adjustment Board and is, by reference, made a part hereof.

Under Article 34 of said agreement, which is the Wage Schedule, at page 45 there is listed the following position:

"M&E Seniority District

Location	Position	Hr. Rate
Mountain Station	Ticket Agent-Operator	$1.711"

This is a five-day position with Rest Days of Saturday and Sunday on which days the office is closed. The assigned hours on September 3 and 4, 1953, were from 7:00 A. M. to 3:30 P. M. with a meal period 10:30 A. M. to 11:00 A. M. Under the escalator clause in the agreement the rate of pay was $1.811 per hour.

The regular incumbent of the above position was Mr. C. S. Genung. On September 3, 1953, Mr. Genung requested to be relieved because of illness. The senior idle available extra employe on that date was Claimant J. M. Carbonero. Mr. Carbonero lives at 30 North 12th Street, Newark, N. J.,

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The least an extra employe under the ORT Agreement could do is to provide himself with a telephone, or similarly certain communication service. Failure on the part of an employe to do so certainly does not place the burden upon the Carrier to pay monetary claims such as the one before your Board.

The claim should be denied.

All data in support of the Carrier's position have been handled with the Employes on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: On September 3, 1953, the regular incumbent of the ticket agent-operator position at Mountain Station reported to work at the regular starting time of 7:00 A. M. and at approximately 7:30 A. M. requested that he be relieved immediately because he was sick. The senior idle extra employe on that date was the Claimant. Article 18(a) of the agreement between the parties reads as follows:

> "Senior employes on the Extra list, if available, will be given preference, but one Extra employe will not be permitted to displace another Extra employe on an unfinished assignment. An Extra employe cannot claim extra work in excess of 40 hours in his work week if another Extra employe who has had less than 40 hours in his work week is available. When an Extra employe takes the assignment of a regular employe, he assumes the conditions of such assignment, including the work week and rest days thereof."

There is no dispute that Claimant was the senior extra employe and was entitled to relieve at Mountain Station if he was "available". The clerk in the superintendent's office, upon receiving the message that the regular employe was sick and wanted to be relieved immediately, made certain efforts to contact Claimant. These efforts were unsuccessful, and some 45 minutes later, he called the next senior extra employe, who worked the position at Mountain Station on September 3 and 4.

The claim is for two days' pay on the theory that Carrier violated the agreement by not calling Claimant to perform this work.

There is a good deal of conflicting evidence in the record, but the following facts are either agreed to or not successfully controverted. Claimant lived about .3 of a mile from Roseville Station, which is 4.08 miles from Mountain Station. He had no telephone and there was no telephone by which he could be reached; however, he had filed his address with Carrier's superintendent, and had instructed Carrier to get in touch with him by calling the agent at Roseville. On the morning in question, the clerk called the agent at Roseville and told him to get in touch with Claimant to give him his call. The agent at Roseville did not know claimant's address and the clerk did not give it to him. At the time of this telephone call, the agent at Roseville was busily engaged in selling tickets to the heavy commuter traffic and was unable to leave his position, either to go to claimant's house himself or to locate and send the janitor, the only other employe at Roseville who might have delivered the message to claimant. Consequently, no one was sent to notify Claimant and the clerk was so informed when he called the agent at Roseville 45 minutes later to ask if Claimant had been contacted. At that point, the clerk called another extra man junior to claimant. Claimant was at home during the 45 minute period in question.

In addition to the above facts, there are a number of disagreements between the parties as to other relevant facts. Claimant contends that the only instructions issued by Carrier were that extra men must file their correct address with the superintendent; that he has been reached at his present address many times by Carrier by means of a messenger sent to call

him; and that he never at any time informed the carrier that he would contact either the superintendent's office or the agent at Roseville when he was available for work. Carrier contends that it is customary on its property for extra employes to leave a telephone number at which they can be reached; that in the past Claimant has been contacted at Roseville Station, not by means of a messenger but by means of his stopping by the station on days when he was not working for the purpose of receiving calls; and that on occasions in the past, he has called the superintendent's office to inform them when he was available for work.

Claimant makes much of the fact that the agent at Roseville did not know Claimant's address and the clerk did not give it to him, apparently assigning this as the reason for Carrier's failure to reach him. The text of an undated letter purportedly from the agent at Roseville to the superintendent, which states that in the early part of September, the agent was called to locate Claimant but that he did not have Claimant's address and did not locate him, despite having the janitor look around for him and looking around himself on his lunch hour, is included in Claimant's submission for the purpose of indicating that the agent and the janitor looked for Claimant in the station and on the streets but did not go to his house since they did not have his address. The record indicates that an unsuccessful attempt was made to locate Claimant on another date—September 1; in addition, the attempt to locate Claimant on the date in question here was made between 7:30 A. M. and 8:15 A. M. whereas the letter refers to the agent's looking for him during his lunch hour. In view of this and the lack of any definite date on the letter, we cannot conclude that this letter referred to the incident in question here and therefore cannot conclude that either the agent or the janitor made any effort to look for Claimant on the streets on the morning in question. We think they did not.

Both of the parties have made extreme contentions in the record. Claimant contends that once he had filed his address with the superintendent it became the obligation of the Carrier to get a message to him—by whatever means—when it was his turn to be called; and that failing to do this, no matter what the circumstances, Carrier violated the agreement. On the other hand, Carrier contends that it is Claimant's obligation to file with the Carrier a telephone number at which he can be reached.

We cannot agree that Rule 18 supports either of these contentions. We think that the rule imposes reciprocal obligations upon Carrier and its employes. See Award 5189. The employe must provide reasonable means by which the Carrier can communicate with him. The Carrier must make a reasonable effort to communicate with him when he is entitled to be called under the Rule.

The rule does not define "available" as furnishing a telephone number or furnishing an address; or in any other manner. A reasonable interpretation of the rule requires that the circumstances surrounding each case be taken into consideration. It is clear from prior awards of this Division that the Carrier may not assume that an employe is unavailable without making some effort to reach him. Awards 2282, 3880, and 4200, cited in support of the claim, establish this point. In each of those cases, it is clear that no effort of any kind was made by the Carrier to contact the employe involved. In this case, on the other hand, it is clear that Carrier did recognize the fact that Claimant was entitled to be called and did make some effort to reach him. The question is, was the effort a reasonable one under the circumstances. Carrier argues that in view of the emergency nature of the vacancy and the busy situation of the agent at Roseville, it made a reasonable effort to comply with the rule. Claimant contends that, having his address, it was Carrier's duty under the rule to get the message to him, whether it was by messenger, telegram or any other means.

Award No. 3845 considered the question of the sufficiency of a Carrier's effort to reach an employe. In that case, Carrier called the telephone number

of an extra employe, heard the telephone ring, hung up, immediately dialed the number again, and when there was no response, promptly called a junior employe to fill the vacancy. The Board held that this effort by the Carrier was not sufficient to justify it in considering the employe unavailable, in view of the fact that the reporting time involved was four-hours-and-five minutes later and the call period still had one-hour-and-thirty-five minutes to run. The Board stated, "Of course, if the showing here indicated an urgent and immediate need, a different attitude would be required."

In this case, Claimant established his residence near the Roseville Station and provided Carrier with his address, in an effort to make himself available for calls. Apparently, under ordinary circumstances, this had worked out since he states that he had received calls by messenger from Roseville on some occasions in the past. However, on the morning in question, the agent at Roseville could not leave his post and had no other employe at hand to deliver the message to Claimant. We agree with Claimant's contention that it was the clerk's duty to inform the agent of Claimant's address if the agent did not know it; however, it would have made no difference in this case whether he did so or not. Claimant's argument that the agent or the janitor went out on the street to look for him is not supported by the evidence. No one was available to go from Roseville Station to Claimant's home to contact him at the time of the telephone call. The only method for contacting Claimant at home in the past had been by messenger from the Roseville Station and apparently no assurance that such messenger service would always be available from that station had been made by either Claimant or Carrier. The communication system which had been established could not cope with the requirements of the situation, but this does not necessarily make Carrier responsible for the failure as Claimant contends. We think that Carrier made all the effort required of it under the rule to contact Claimant in view of the immediate and urgent need for a replacement and the suddenness with which this need appeared. While we recognize the factual distinctions between the two cases, we feel that here, as in Award 3115 between the same parties, Claimant has not shown availability so as to render Carrier liable for a call under the circumstances of this case. If such failures of communication are to be avoided in the future, a more definite arrangement between the parties is required; if the responsibility for assuring such communication is to be placed uniformly upon one of the parties, the Rule should be amended to so state.

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 Employes involved in this dispute are respectively Carrier and Employes 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. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July, 1957.