

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE AND HUDSON RAILROAD CORPORATION

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

1. Carrier violated the agreement between the parties hereto when on 27th day of August, 1954, it caused, required or permitted Conductor Heustis, a train service employe to handle (receive, copy and deliver) Train Order No. 29 at Crown Point, New York.

2. Carrier violated the agreement in failing and refusing to call or permit H. O. Jones, Agent-telegrapher to perform the work of handling such train order, he being present and available at the time.

3. Carrier shall be required to compensate H. O. Jones, Agent-telegrapher, Crown Point, New York, for one call, as provided in Article 3(d), account violations as above set out.

4. Carrier violated the agreement between the parties hereto when on the 25th day of November, 1954, it caused, required or permitted Conductor Kilburn, a train service employe to handle (receive, copy and deliver) Train Order No. 10 at Essex, New York.

5. Carrier violated the agreement in failing and refusing to call or permit Walden D. Taylor, Agent-telegrapher, to perform the work of handling such train order, he being available.

6. Carrier shall be required to compensate Waldon D. Taylor, Agent-telegrapher, Essex, New York, for one call, as provided in Article 3½, Section 1(o), account violations as above set out.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an agreement, effective July 1, 1944, entered into by and between The Delaware and Hudson Railroad Corporation, hereinafter referred to as Carrier or Company and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employees. The Agreement is, by reference, included in this submission as though copied herein word for word.

These disputes were handled on the property in the usual manner to the highest officer designated by Carrier to handle such claim. The claims were denied and the dispute failed of adjustment. Such handling was in accord-

The Agent-Telegrapher assigned to Essex Station is not a resident of the village of Essex. He resides in the vicinity of Keeseville, N. Y., approximately eighteen (18) miles from Essex. It would have been impossible for the Agent-Telegrapher to reach Essex in time to avoid serious delay to not only Train SC-12, but to Train No. 34, a first-class passenger train that was following Train SC-12. This territory is on single track. Both of these trains had a Form 19 Train Order to meet northbound train WR-3 at Cummings siding, a point south of Wadhams.

On each occasion in this claim, i.e., August 27 and November 25, 1954, the Agent-Telegrapher was not available. On August 27th the Agent-Telegrapher assigned to the position at Crown Point was not available account not at home. On November 25th the Agent-Telegrapher at Essex was not available because he resided eighteen (18) miles from the location of his employment.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: We have here another docket involving the handling of train orders. Petitioner contends that on each of two occasions the Carrier required or permitted a conductor to handle train orders in violation of Article 23 of the effective agreement.

There is no dispute with respect to the facts. On the occasions cited, one at Crown Point and the other at Essex, conductors did in fact handle train orders. It is also of record that an agent-telegrapher is employed at each of these two points. On the dates in question the agent-telegraphers were not on duty, hence the contention that each should be paid for a call.

Article 23(a) of the effective agreement provides:

"The handling of train orders at telegraph or telephone offices is restricted to employees under the scope of this agreement and Train Dispatchers, except in emergency. In emergency, if an employee under the scope of this agreement is available or can be promptly located he must be called to handle train orders and if not so called will be paid as provided by the call rule."

It is clear from the record that Crown Point and Essex are both "telegraph or telephone" offices. It is also clear that no emergency existed on either occasion involved in the claim. The Respondent Carrier defends its action on the basis of past practice and with a contention that Claimants were not available when the respective conductors handled the train orders at Crown Point and Essex.

With respect to the first defense, that of past practice, the Carrier does not prove that such has been the case at stations where "telegraph or telephone" offices are located. Even if such had been past practice, it would have to yield to the clear and unambiguous terms of Article 23(a) quoted above. This article is a specific rule excepting only situations where emergencies are involved.

The Carrier's second defense is to the effect that Claimants were not available on the two occasions at issue. However, the record does not show that the Carrier made any effort whatsoever to ascertain whether or not Claimants were readily available to accept a call and perform the work within the time limits involved. Normally the Division has accepted unavailability as a defense only after the Carrier made a reasonable effort to ascertain if the employee entitled to a call was in fact available. No such effort was made here. Under the circumstances revealed in this record, and

in view of the requirements of Article 23(a) we have no alternative but to sustain the claim. Awards 1096, 3880 and 4200.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1958.