

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Sempliner, 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) The Carrier violated the Agreement between the parties hereto when it deducted from wages due R. E. Deso, for the first period of February, 1955, an amount equivalent to one day's pay at pro rata rate.
- (2) The Carrier shall be required to reimburse R. E. Deso for such amount wrongfully deducted.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect an agreement, effective July 1, 1944, as amended, 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.

This dispute was handled on the property in the usual manner to the highest officer designated by Carrier to handle such claims. The claims were denied and the dispute failed of adjustment. Such handling was in accordance with the provisions of the Railway Labor Act, as amended. The dispute, not having been settled by management of Carrier in accordance with the agreement, is submitted to the Third Division, National Railroad Adjustment Board, for award. This Board has jurisdiction of the parties and the subject matter.

R. E. Deso, claimant owns assignment of second shift telegrapher and clerk at Plattsburg, New York. Prior to December 6, 1954, his assigned hours were 4:00 P.M. to 12:00 Midnight. His rest days were Sunday and Monday.

to which entitled, if ready for service and not used, or if required on duty less than the required minimum number of hours as per location except on assigned rest days and holidays.

"(b) This rule shall not apply in cases of reduction of forces nor where traffic is interrupted or suspended by conditions not within the control of the Company."

It will be noted that under this rule an employee is not guaranteed any earnings "on assigned rest days." Tuesday, December 7, 1954, was a rest day on the assignment which Telegrapher-Clerk Deso assumed on December 6th and Article 25 clearly does not support the claim for a day's pay.

In the handling of this claim on the property, the right of the carrier to make the changes which resulted in the claim and the manner in which the changes were made were not questioned by the employees other than the claimant making claim for a day's pay under the Guarantee Rule.

In Awards 5854, 5998 and 6211 the Third Division has denied claims where the situations involved were identical to the facts in this claim. While the claim in Award 6281 was different, the claim was denied and Awards 5854, 5998 and 6211 were cited by the Board to support such denial.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant alleges violation of the Agreement by the Carrier. The facts are not disputed. R. E. Deso, the Claimant, a second shift telegrapher and clerk at Plattsburg, N. Y., had assigned hours from 4:00 P.M., to 12:00 Midnight, with rest days Sunday and Monday. Under date November 29, 1954 Claimant Deso received a communication over signature of C.E.R. Haight, assistant Superintendent as follows:

"Effective Monday, December 6, 1954, your hours of service will be changed from 4:00 P.M. to Midnight, to from 2:00 P.M. to 10:00 P.M.

"Rest Days of your position, 2nd trick, Plattsburg, will be changed from Sunday and Monday, to Monday and Tuesday."

Claimant, R. E. Deso, therefore, did not work Sunday December 5, Monday, December 6, or Tuesday, December 7th, and on December 13, 1954 filed claim for 8 hours straight time because he was not allowed to work on Tuesday, December 7th, in accord with Article No. 25 (the Guarantee Clause of the applicable contract). The claim was paid in the third pay period of January 1955. On February 11, 1955 a letter was sent to the Claimant, R. E. Deso, claiming the payment of the 3rd pay period in January was in error and stating that the funds would be deducted the 2nd period in February. The funds were so deducted and complaint is made here.

Errors of computation, both as to amount and as to hours of work, are not unusual, and may be corrected when discovered if within a reasonable period. The same is true of many other types of errors such as payment to the wrong individual, payment of the wrong classification of service, etc. This

was not such an error. The work was performed in December, and the Claimant paid. December 13th, 1954 Claimant made a claim. The claim was found to have merit and paid in the third pay period in January.

There must be an end to all controversy and the logical end is when one side or the other acknowledges the merits of the other side's position. This was done here as evidenced by payment. In the absence of a showing of fraud, the matter cannot be reopened. Any attempt to do so does violence to the very principles of contract between free and honorable men.

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 wages were wrongfully deducted in accord with the Opinion.

AWARD

Claimant will be paid wages wrongfully deducted in the first pay period of February, 1955.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1958.