

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

DELAWARE AND HUDSON RAILROAD CORPORATION

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

1. Carrier violated agreement when on June 24, 1955, it failed and refused to permit R. E. Deso, second shift telegrapher and clerk, Plattsburg, New York, to deliver train order Nos. 213, 214, addressed to C & E, Extra 4091, South, but instead required R. E. Deso to leave said train orders "on clip board outside of office window" at the end of his tour of duty (10:00 P. M.) which orders were later picked up by train service employees of said train.

2. Carrier shall compensate R. E. Deso for two hours at one and one-half times pro rata hourly rate, second shift telegrapher and clerk position Plattsburg, New York, in accordance with Rule 3(d).

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an agreement effective July 1, 1944 entered into by and between the Delaware & Hudson Railroad Corporation, hereinafter referred to as Carrier, or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers, or Employees. The Agreement as amended, 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 through the highest officer designated by Carrier to handle such claims. The claim was denied and the dispute failed of adjustment. In accordance with the provisions of the Railway Labor Act, as amended, the dispute involving interpretation of the collective bargaining agreement and not having been adjusted, is submitted to this Division for award. This Board has jurisdiction of the parties and the subject matter.

The dispute concerns the handling of train orders at Plattsburg, New York. At Plattsburg, New York, there are two positions of telegrapher clerk and one position of assistant agent covered by the Telegraphers' Agreement. This dispute concerns a claim for call of R. E. Deso who owns the second shift assignment having assigned hours of 2:00 P. M. to 10:00 P. M. On the

(Exhibits not reproduced.)

OPINION OF BOARD: The question presented by this Claim has been considered by this Division in a number of essentially similar awards, at least ten of which, Awards 1166, 1169, 1170, 1422, 1680, 3670, 4057, 5013, 5872 and 8657, have sustained the claims. On the other hand, in Awards 1821, 7343 and 8327 similar claims have been denied. Awards 1821 and 5872 were made by Referee Yeager. In Award 1821, as here, the train order rule was involved; in Award 5872 it was not, but Referee Yeager held the difference immaterial and sustained the claim on the basis of the scope rule, thus in effect reversing his original opinion and wiping out the only early award denying such claim. Of the last three awards mentioned above, two denied and only one sustained similar awards. However the sustaining award was the latest and involved precisely the same parties and rules. Under the circumstances we consider it proper to adhere to the majority line of authority, especially since both the train order rule and the scope rule are here involved.

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 Employee involved in this dispute are respectively Carrier and Employee 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 has been violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 29th day of March, 1960.

DISSENT TO AWARD NO. 9319, DOCKET NO. TE-8699

For the reasons assigned in Carrier Members' Dissent to Award No. 8657, which dissent we make a part of our dissent here, Award 9319 is in error and we dissent.

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ R. A. Carroll

/s/ C. P. Dugan

/s/ J. F. Mullen