

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, 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 Railroad, that:

1. Carrier violated the Agreement when on the 9th day of September, 1955, it caused, required or permitted Mr. Fields, a train service employe, to handle (receive, copy and deliver) Train Order No. 18 and in addition thereto, one message concerning operation of his train at Glens Falls, New York.
2. Carrier will be required to compensate the senior idle telegrapher (extra in preference) Saratoga Division, for 8 hours at the minimum hourly rate for telegraphers, for the violation as above set out.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement, effective July 1, 1944, between Delaware and Hudson Railroad Corporation, hereinafter referred to as Carrier or Management and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement, as amended, is on file with this Division and is, by reference, included in this Submission as though set out herein word for word.

This dispute involves interpretation of the collective bargaining agreement and has been handled on the property in the usual manner, through highest officer designated by Carrier to handle such disputes and failed of adjustment. It is properly submitted to this Division for award, as provided in Railway Labor Act, as amended.

At Glens Falls, New York, which is a city of 19,610 (1950 census) population, the Carrier maintains full complement of station services. The position of agent is not covered by the Telegraphers' Agreement but there is one position, Assistant Agent, which is covered by our Agreement. The occupant of the position, however, is not required to nor permitted to perform service as a telegrapher or telephoner. In other words, Glens Falls is a station on Carrier's line of railroad but it is not a telegraph or telephone office.

On the 9th day of September, 1955, Conductor Fields, in Charge of train Extra 4060 required train order and other instruction to permit movement of

Scope Rule or at some other point in the Agreement. Failure to do this in 1939, and failure to do it in the 1946 negotiations leads us to the conclusion that the parties have not agreed to change the long-established practice. It is a matter for further negotiation. It is not for us to read into the language of the Scope something which the parties themselves have quite obviously omitted."

It is the carrier's position that claim should be dismissed account not presented in accordance with rule covering handling of claims and grievances as contained in the National Agreement of August 21, 1954; if decided on its merits, the claim should be denied account not supported by agreement rules and practices thereunder.

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

(Exhibits not reproduced.)

OPINION OF BOARD: Claims of this Organization against this Carrier involving the same material issues have been recently denied by this Board: Award 7955, Cluster, Referee; Claims 1, 2, 3, and 4 in Award 9204, Stone, Referee; and Award 9262, Hornbeck, Referee.

The above precedents, if not absolutely binding, are the only ones presented in reference to these particular parties and their applicable Agreement, Effective July 1, 1944, as amended, and are, therefore, especially deserving of consideration.

We do not believe that the decisions rendered in the aforementioned Awards are probably wrong.

Having reached this conclusion, we are not justified in taking action which would in effect reverse the previous Awards on the same property.

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 was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of March 1962.