

Award No. 10914
Docket No. TE-9459

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert O. Boyd, 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 when on April 4, 1956, it caused, required or permitted Conductor J. E. Coates to handle (receive, copy and deliver) train order No. 15 at North Creek, N. Y., Agent-Telegrapher J. M. Parkis being available but was not called.

(2) Carrier shall compensate J. M. Parkis for one call for the above violation, as provided for in Article 3(d) of the agreement. (Carrier's Case No. 10.56 ORT)

(3) Carrier violated the agreement when on the 10th day of May, 1956, it caused, required or permitted Conductor Gerald Manell, Engine 4095, to handle (receive, copy and deliver) train order No. 3 at Port Kent, N. Y., Agent-Telegrapher Waldon D. Taylor being ready and available to perform this work but was not called.

(4) Carrier shall compensate Waldon D. Taylor, Agent-Telegrapher, Port Kent, N. Y., for one call under Rule 3 (Call Rule) at the rate of \$2.022 per hour for three hours, total \$6.07. (Carrier's Case No. 8.56 ORT)

(5) Carrier violated the agreement when on June 19, 1956, it caused, required or permitted Conductor W. Benjamin to handle (receive, copy and deliver) 19 order No. 13, also on June 20, 1956, 19 order No. 14 at North Creek, N. Y., Agent-Telegrapher J. M. Parkis being available but was not called.

(6) Carrier shall compensate Agent-Telegrapher J. M. Parkis for a call for each of the above violations, as provided in Article 3(d) of the agreement.

(7) Should this type of violation at North Creek be continued, Agent-Telegrapher J. M. Parkis shall be compensated for each violation and a joint check be made of the Carrier's records to determine date of violations. (Carrier's Case No. 12.56 ORT)

(8) Carrier violated Agreement when on the 14th day of July, 1956 it caused, required or permitted Train Dispatcher Clarence B. Ryan to handle (receive, copy and deliver) train order No. 11 at Plattsburg, N. Y., Telegrapher George D. Francis being ready and available to perform this work but was not called.

(9) Carrier violated the Telegraphers' Agreement when on the 20th day of July, 1956, it caused, required or permitted Train Dispatcher Clarence B. Ryan to handle (receive, copy and deliver) train order No. 213 at Plattsburg, N. Y. Telegrapher Randall E. Reso was ready and available to perform this work but was not called.

(10) Carrier shall compensate George D. Francis and Randall E. Deso, Telegraphers, Plattsburg, N. Y., for one call under Article No. 3 (Overtime and Calls) at the rate of \$1.962 per hour for three hours, a total of \$5.89 each.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement effective July 1, 1944, entered in by and between The Delaware and 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 is, by reference, included in this submission as though copied herein word for word.

There are submitted herein three separate disputes which were handled on the property in the usual manner through the highest officer designated by Carrier to handle such claims. The claims were denied by the highest officer and remain unadjusted disputes. This Division, under the provisions of the Railway Labor Act, as amended, has jurisdiction of the parties and the subject matter.

For convenience we shall designate in the Statement of Facts the four disputes as Cases Nos. 1, 2, 3, and 4, and identify each in accordance with numbered paragraphs of the Statement of Claim.

CASE NO. 1 (Paragraphs 1 and 2 Statement of Claim)

This dispute involves the handling of a train order by Conductor J. E. Coates on April 4, 1956 at North Creek, N. Y.

Since the facts in regard thereto are fully set forth in the claim filed on May 30, 1956, by Local Chairman Stah, we herewith present the claim verbatim:

"THE ORDER OF RAILROAD TELEGRAPHERS

Division No. 12

Cohoes, N.Y.

May 30, 1956.

Mr. P. W. Young,
Supt. Sara-Champ. Divn.
Albany, N. Y.

Dear Sir,

The following claim is hereby presented.

Statement of Claim.

Carrier violated the Telegrapher's Agreement on April 4th, 1956, when it caused, required or permitted Conductor J. E. Coates to

First Division Award 7206, Referee Wolfe:

"The Carrier is not bound to develop the claim for the employees."

First Division Award 12312, Referee Boyd:

"The claim for 'all firemen in road service when required to perform switching at Moisington Yards August 12, 1935, and subsequent dates until practice stopped and yard crews returned to service' is indefinite; and if time claims were not filed, does not give the Carrier adequate notice of the claim. Mr. John Thad Scott, Jr., acting as referee said in Award 11642 'we do not propose to require the Carrier to search its records to develop claims of unidentified trainmen on unspecified dates.'"

First Division Award 13296, Referee O'Malley:

"Furthermore, we are here presented with a claim for unknown persons or unknown dates except May 25, 1943. This Division has held that it is not proper to direct the carrier to search and evaluate records to make a claim for the proponents of one."

First Division Award 14124, Referee Weeks:

"The very lengthy docket and the briefs by both parties contain numerous citations of awards of a similar nature, sustaining and denying such claims, and also instances where claims were considered and allowed for unnamed claimants."

"A blanket claim of this kind would cover so many dissimilar situations that it would make incomprehensible a situation which is now only confusing. It would also require the Carrier to search its records and develop claims for unidentified trainmen on unspecified dates, as was so well stated in Award 11642."

First Division Award 15214, Referee Kelliher:

"Claim is also denied for 'pay for all subsequent dates Burro Crane performed service on main lines, for trainmen, who were not called for this service' because it relates to matters and dates that this Division cannot ascertain from the record."

First Division Award 16527, Referee Loring:

"These claims are made in behalf of an engine foreman and crew '(or the proper crew who stood to be called for service).' The carrier cannot be required to search its files and records in order to support claimants' grievances."

Claims are not supported by agreement rules and practices thereunder and carrier respectfully requests that they be denied.

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: In the submission the claims identified in items (1) thru (6) involve the situation where an employe not covered by the

Telegraphers' Agreement copied train orders at a point where an Agent-Telegrapher was regularly employed, but at a time when the Agent-Telegrapher was not on duty. It is asserted that Article No. 23 — Handling Train Orders — has thus been violated. The Article appears in full in the submission.

The issue presented in these claims has been before the Division a number of times. Awards 8260, 9204 (item 5) 10241, 10243, 10526. In these awards the facts are similar, the parties are the same and the same rule is involved as in these claims (1-6). Such prior awards become controlling and we must, therefore, find that in claims 1-6, inclusive, that the Carrier violated the Agreement and a sustaining claim as to these items will be allowed.

In item (7) the Organization is requesting that:

"Should this type of violation at North Creek be continued, Agent-Telegrapher J. M. Parkis shall be compensated for each violation and a joint check be made of the Carrier's records to determine date of violation."

The Carrier argues that this amounts to nothing more than a fishing expedition. Prior awards involving the same parties in which this question was presented have been cited. In Award 8657, Int. Serial No. 189, the request was for a joint check to determine specific dates when the violation asserted in the claim took place. In the interpretation of the award the Division said "... The Carrier was required to permit a joint check of records to determine if there were subsequent dates when Claimant J. M. Parkis was deprived of work in the same way in contravention of the agreement". In Award 9343 the request was for a joint check "... to determine violations, if any, occurring at Castleton, Vermont, subsequent to dates above set out". The Division denied this request because it had not been handled on the property and no rule supported the request.

There are many awards of this Division where a joint check has been directed to ascertain dates or names but in all such instances the joint check was merely to obtain readily available information relating to the specific dispute before the Division. The check was not for the purpose of developing new claims. In Award 8657 the request was for a check to develop subsequent dates of the same violation. But here we have a request for a check of dates "should this type of violation" be continued. To give effect to this request would require this Division to determine in advance the merit of possible claims of "this type" without the necessity of them being handled in the usual manner on the property as required by the Railway Labor Act. We are not dealing here with a request to ascertain dates of a continuing claim, but instead are asked to determine now "this type" of claim that might be discovered. Furthermore, this request (item 7) is so similar to that disposed of in Award 9343 that such award should control here. This, therefore should be denied.

In items 8, 9 and 10, there are claims for a call under Article 3 of the current Agreement. It is alleged that the Carrier violated the Agreement when a Train Dispatcher, not covered by the Telegraphers' Agreement, handled train orders at a point where Telegraphers were ready and available to do the work but were not called. It is contended by the Carrier that Article 23(a) specifically authorizes the handling of train orders by Train Dispatchers. This issue has been before this Division a number of times and the contention here made has been found adverse to the Organization. See Awards 9217, 9914 and 10672. No useful purpose would be served by re-examining the basis for

the findings expressed in these awards. It is sufficient to say that they are well reasoned, and are persuasive here. Accordingly, items 8, 9 and 10 should be denied.

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 Agreement was violated in part and not violated in part as indicated in the Opinion.

AWARD

Items 1, 2, 3, 4, 5 and 6 are sustained,
Item 7 is denied,
Items 8, 9 and 10 are denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1962.