

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

(Supplemental)

Phillip G. Sheridan, Referee

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**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 Agreement between the parties hereto when on March 24, 28 and April 5, 1956, it caused, required or permitted train service employes to handle (receive, copy and deliver) train orders at Corinth, New York, as shown below:

19 Order No. 7 March 24, 1956, by Condr. F. W. Ahearn  
19 Order No. 1 March 28, 1956, by Condr. R. Hewitt  
19 Order No. 2 March 28, 1956, by Condr. M. Harris  
19 Order No. 1 April 5, 1956, by Purington (Trainman or Fireman)  
19 Order No. 4 April 5, 1956, by Condr. S. Waters

2. Herbert B. Austin, regular assigned agent-telegrapher, Corinth, New York, was available (but not called) to perform work of handling train orders above set out and carrier shall now be required to compensate him for one call for each violation, as provided in Article 3(d) of the agreement, at the rate of \$2.406 per hour. Each call \$7.22, (total claim \$36.10).

3. If Carrier continues violations, as set forth in Paragraph 1, then compensation shall be paid to the agent-telegrapher at Corinth, for each and every violation. The names of employes and amounts due for such violations, if any, and the dates thereof to be determined by joint check of carrier's record.

**EMPLOYEES' STATEMENT OF FACTS:** There was, at all times hereinafter mentioned, in full force and effect a collective bargaining agreement entered into 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 in force at the time of the violation set forth herein was effective on July 1, 1944. The Agreement, as amended, is on file with this Division

**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 rule 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:** This case involves the copying of a train order by a conductor at a station where a telegrapher is employed but was not on duty.

The question involves whether Article 23 under the factual situation herein was violated. Article 23 provides:

**"ARTICLE No. 23  
"Handling Train Orders**

"(a) The handling of train orders at telegraph or telephone offices is restricted to employes under the scope of this agreement and Train dispatchers, except in emergency. In emergency, if an employe 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.

"(b) Emergencies as herein specified shall include casualties or accidents, engine failure, wrecks, obstruction of tracks, washouts, tornadoes, storms, slides or unusual delays due to hotbox or break-in-two that could not have been anticipated by the Train Dispatcher when train was at last previous telegraph office, which would result in serious delay to traffic."

This same Article involving the same parties has been interpreted by this Board on many occasions, and its interpretation applied to factual situation as presented herein.

In the instant case, there was no emergency and the Carrier did not call the Claimant on the basis of the Awards 8260, 9204, 9343, 10241, 10243, 10435 and 10526. Claims 1 and 2 are sustained.

Claim No. 3 will be allowed for the reason that the Carrier did not comply with Article V in setting forth its reasons for denying the claim. See Award 9205.

**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 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

The Agreement was violated.

#### AWARD

Claims 1, 2 and 3 sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 11th day of February, 1963.

#### CARRIER MEMBERS' DISSENT TO AWARD 11111, DOCKET TE-9565

The Majority improperly held among other things, that Claim 3 would be allowed because Carrier did not comply with Article V when the Superintendent did not set forth his reasons in denying the claim.

We have previously held that when there is no proper claim before the Carrier, there is no requirement to deny it or give reasons. In Award 9250 (Stone), we held:

"Carrier . . . asserts that it did make timely denial of the claim and contends that the claim should not be sustained for the reason that it is vague, indefinite and uncertain and not made in behalf of any identifiable claimant.

"The employees involved in the claim here submitted are neither named nor identified. Section 1(a) of Article V of August 21, 1954, relied on by petitioner also requires that all claims or grievances must be presented by or in behalf of the employee involved. Where there is no identifiable claimant in whose behalf the claim is made there is no proper claim before us upon which to act and the tendered claim should be dismissed."

It is apparent that Paragraph 3 was not a valid claim because it was too vague and indefinite—as we have previously held in Awards 9343, 10435 and 10914—therefore, there was nothing for Carrier to act upon and the claim should have been dismissed.

For the reasons stated above, we dissent.

/s/ R. A. DeRossett  
R. A. DeRossett

/s/ G. L. Naylor  
G. L. Naylor

/s/ W. F. Euker  
W. F. Euker

/s/ R. E. Black  
R. E. Black

/s/ W. M. Roberts  
W. M. Roberts