

Award No. 11498
Docket No. TE-9858

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad, that:

1. Carrier violated agreement between the parties hereto when it failed and refused to compensate E. Gazoo account extra train service employe handling train order No. 23 at 1:53 A. M. (Train No. 33) and train order No. 25 at 2:18 A. M. (Train No. 29), May 23, 1956, at Rockingham, N. C.

2. Carrier shall now be required to compensate E. Gazoo for one call (2 hours at time and one-half, regular rate of second shift operator position, Rockingham, N. C.) in accordance with agreement rules.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between the Seaboard Air Line Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes, or Telegraphers. The Agreement is on file with this division and is by reference made a part of this dispute as though set out herein word for word. The current agreement became effective October 1, 1944.

The dispute submitted herein was handled on the property in the usual manner through the highest officer named by Carrier to handle such disputes and failed of adjustment. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the subject matter and the parties to this dispute.

The dispute concerns interpretation of the following rule of the Agreement:

RULE 24

Handling Train Orders

"No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or tele-

were handled in such emergencies will be promptly furnished the operator at the office where handled, so that claim for call may be made. At offices where two or more shifts are worked, the operator whose tour of duty is nearest the time such orders were handled will be entitled to the call."

It is the position of the Carrier that Operating Rule 1063 and Agreement Rule 24 are consonant and must be applied together.

In order for a telegrapher to be called or to be paid account not being called pursuant to the provisions of Rule 24, it is mandatory that he (1) be employed at the station where the train order is to be or was copied; (2) be available or be where he can be promptly located.

In the absence of the card in the window as required by Operating Rule 1063, there was no possible way for the crews whose trains were being delayed to know whether Mr. Gazoo was available or where he could be promptly located.

An obligation and duty rested on the claimant to make such information available just as Rule 24 placed an obligation upon the Carrier to pay him a call if the information was displayed and he was available but was not called to copy an order and the order was, under such circumstances, copied by someone else at his station.

While the Employees will probably correctly contend that Mr. Gazoo's failure to comply with Operating Rule 1063 was a disciplinary matter, nevertheless that is beside the point when considering his time claim as it was **only through compliance with the operating rule that his availability could be ascertained by the train crew and in order to establish himself as a claimant under Rule 24 it was necessary that he be available and where he could be promptly located.**

When the firemen found that he was not available and they could not promptly locate him, they contacted the Dispatcher. To avoid further delay to the trains the orders were thereupon promptly issued.

We, therefore, are confronted with the case of an operator who has been continuously employed since August 25, 1949, during which time the book of Operating Rules was revised and Operating Rule 1063 was brought forward without material change (December 1, 1951), and who feels that the Carrier should be penalized for a call despite the fact that he failed to make himself available for such call although Rule 24, the rule upon which the claim is based, makes availability the primary requisite.

It is the Carrier's position, therefore, that by failure to comply with Operating Rule 1063 the claimant not only violated the Operating Rules but he also removed himself from the pay provisions of Agreement Rule 24.

Carrier affirmatively asserts that all data used herein has been discussed with the General Chairman of the petitioning organization.

OPINION OF BOARD: The Carrier states that Claimant, had he placed in the window of the station a card showing where he could be located, would have been paid for a call for the occurrence described in paragraph 1 of the Claim. It contends that Claimant's uncontroverted failure to comply with Carrier's Operating Rule 1063 makes him ineligible for the benefits prescribed in Rule 24 of the collective bargaining agreement.

THE PERTINENT RULES

Rule 24 (of the Agreement) — Handling Train Orders — reads:

"No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in emergency, in which case the operator will be paid for the call. It is not the purpose of the management to require other than those covered by this agreement and train dispatchers to handle train orders, excepting under conditions of an emergency nature, such as accidents, personal injury, washouts, fires, engine failures, or such other similar causes. Advice that train orders were handled in such emergencies will be promptly furnished the operator at the office where handled, so that claim for call may be made. At offices where two or more shifts are worked, the operator whose tour of duty is nearest the time such orders were handled will be entitled to the call."

Carrier's Operating Rule 1063 reads:

"At stations where the service is not continuous the operators, when relieved, must place in window where it can be read from the outside a card showing where they can be located. They will also have placed in conspicuous place the address of any track foreman or other roadway department foreman residing at their stations."

RESOLUTION

Carrier's Operating Rule 1063 had been in existence for many years prior to the execution of the collective bargaining agreement. It must be presumed that the parties had knowledge of it when they agreed to Rule 24. They, therefore, impliedly agreed that compliance with the Operating Rule is a condition precedent to proving, *prima facie*, satisfaction of the phrase in Rule 24 — "and is available or can be promptly located."

Claimant, through his own nonfeasance, failed to comply with the Operating Rule. We will deny the Claim.

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of June 1963.