

Award No. 11520
Docket No. TE-10439

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Webster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WESTERN MARYLAND RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Western Maryland Railway, that:

1. Carrier violated the Telegraphers' Agreement when, on the 2nd day of May, 1957, it caused, required or permitted Conductor B. Fansler, an employe not covered by our Agreement, on Extra 195 East to handle (receive, copy and deliver) train order No. 219 at Bayard, West Virginia. Agent-Operator G. W. Fulk was ready and available to perform this service but was not called.

2. Carrier shall be required to compensate G. W. Fulk, Agent-Operator, Bayard, West Virginia for one (1) call under Rule 12 (d) for the violation occurring, as set forth in paragraph 1.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between Western Maryland Railway Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The rules Agreement was effective February 1, 1951. The Agreement, with all amendments and supplements thereto, are on file with this Division and, by reference, are made a part of this submission as though set out herein word for word.

The dispute submitted herein was handled on the property in the usual manner through the highest officer designated 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 parties and the subject matter.

Beginning in 1952, Telegraphers had a series of disputes with Carrier in regard to the handling of train orders under varying circumstances. Several of these disputes were submitted to this Division and on September 14, 1956, Awards 7400, 7401 and 7402 were rendered in which the claims were denied. Telegraphers then served notice, as provided in Section 6 of the Railway Labor Act, for a new rule in regard to the handling of train orders. This notice was dated October 31, 1956. As a result of negotiations based upon

Wherefore, Employees request the Board upon final consideration of this dispute that award be issued sustaining the claim as presented.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The claimant is regularly assigned to the position of agent-operator at Bayard, W. Va. The scheduled working hours are 8:15 A.M. to 5:15 P.M. with one hour off for lunch.

Bayard is a one trick office located on the Thomas Subdivision 62 miles west of Cumberland, Maryland. The train dispatcher's office for that subdivision is at Cumberland. At 9:15 P.M. on May 2, 1957, the train dispatcher at Cumberland telephoned train order No. 219 to conductor B. Fansler at Bayard, W. Va., to provide for the passage of an opposing train.

POSITION OF CARRIER: A copy of Memorandum of Agreement between the Western Maryland Railway Company and The Order of Railroad Telegraphers dated February 17, 1957, is attached and marked "Carrier's Exhibit A." Section (a) of that agreement is applicable in this case and reads as follows:

"No employe other than those covered by agreement between the Western Maryland Railway Company and The Order of Railroad Telegraphers, effective February 1, 1951, and train dispatchers shall 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 employes shall be paid for a call as provided in Rule 12(d)."

The validity of the claim hinges on whether or not Mr. Fulk was available or could be located promptly during his off hours when it was necessary for the train order to be copied at Bayard. The Carrier submits that he was not available Bayard is 62 miles from Cumberland. Mr. Fulk does not have a telephone at his residence nor has he filed information with the Company as to where or how he can be called. In handling the case on the property the Brotherhood has based its claim on the assertion that no effort was made to call the claimant. Obviously, no effort was made since the dispatcher had no way of communicating with him. Therefore, since the claimant was not available for call, under the express provisions of the February 19, 1957 Memorandum of Agreement, no payment is due.

The Railway Company's Answer in this case is made to the best of its ability without knowledge of the contents of the Employees' Submission to the Board, and the Carrier reserves the right to file additional data with the Board in rebuttal or reply to the Employees' Submission.

This dispute has been handled by the Carrier in accordance with the provisions of the Railway Labor Act and the rules of the National Railroad Adjustment Board. All data submitted in support of its position by the Carrier have been presented to the Employees and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a claim for a call because the Carrier allegedly violated the March 1, 1957 Agreement. This Agreement provides in part:

"BETWEEN
WESTERN MARYLAND RAILROAD COMPANY
AND
THE ORDER OF RAILROAD TELEGRAPHERS

"IT IS HEREBY AGREED:

"Section (a).

No employe other than those covered by agreement between the Western Maryland Railway Company and The Order of Railroad Telegraphers, effective February 1, 1951, and train dispatchers shall 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 employe shall be paid for a call as provided in Rule 12 (d)."

The record discloses that Claimant lived within one block of the station in a town of less than three hundred population. On the day in question while the Claimant was off duty a train order was copied by some one not covered under the Agreement. No attempt was made to reach the claimant.

The Carrier's defense is that because the Claimant had no phone in his home he was not available or could not be promptly located. There is no evidence that there was an emergency or that he was not available.

As this Division has held in Award 11464 among others, "Since the Carrier did not attempt to call or locate the Claimant, it cannot now question his availability."

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearings;

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1963.