

Award No. 11593
Docket No. TE-9616

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad, that:

1. Carrier violated the agreement between the parties hereto when, on December 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 18, 19, 20, 21, 24, 26, 27, 28, 31, 1956, it caused, required or permitted employes not covered by Telegraphers' Agreement to handle (receive by telephone, copy and deliver) track car permits (Form TC), at Valois, New York.

2. Carrier violated agreement between the parties hereto when, on December 7, 18, 21, 1956, it caused, required or permitted employes not covered by Telegraphers' Agreement to handle (receive by telephone, copy and deliver) track car permits (Form TC) at Caywood, New York.

3. Carrier shall compensate the senior idle telegraph service employe on the Seneca Seniority District, extra in preference, for eight (8) hours at minimum telegrapher (telephoner) rate for such seniority district for each and every day violations have occurred as set forth in paragraphs 1 and 2.

4. Carrier shall be required to permit joint check of its records to determine violations at Valois subsequent to December 31, 1956, as set forth in paragraph 1, and joint check of its records to determine violations subsequent to December 21, 1956 at Caywood, as set forth in paragraph 2; and, when such violations, if any, are determined, Carrier shall be required to compensate employes entitled to such compensation as may be revealed by joint check of employe work records.

EMPLOYEES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement between the Lehigh Valley Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was effective on the first day of February, 1948. The Agreement is on file with this Division and is by reference made a part of this submission as though set out herein word for word.

orders at a point where an operator is employed. As pointed out in Carrier's Statement of Facts, there is no operator employed at the point involved in the instant claims. Therefore, it is obvious there was no violation of Rule 32, and that is the only rule in the current agreement relating to train orders for the claims in the instant case.

It is specifically clear in Rule 32 that at points where no operator is employed handling orders at such points is not exclusively reserved to the Telegraphers. In view of said rule, Carrier asserts that the Organization cannot establish the burden of proof necessary in these claims and, as so often held by this Division, that burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks such allowance. See Awards Nos. 4011, 5135, 5329, 5345 and others.

The claims herein should be denied.

The facts presented in this submission were made a matter of discussion with the Committee in conference on the property.

OPINION OF BOARD: The issue presented by this dispute has been before the Board on numerous occasions, resulting in Awards 8146, 9999, 10060, 10863, 10911, 10913, 10915, among others.

The issue having been decided by this line of awards, the claim will 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 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 12th day of July 1963.