

Award No. 11904
Docket No. TE-10275

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Chicago and St. Louis Railroad (Wheeling and Lake Erie District) that:

1. The Carrier violated and continues to violate the Agreement between the parties when, at Terminal Junction, Ohio, it requires or permits employes not covered by the Telegraphers' Agreement to transmit or receive messages, orders or reports of record both within and outside the assigned hours of the Telegrapher-Clerk assigned to this location.

2. The Carrier shall, because of the violations set forth above, commencing July 24, 1956, and thereafter so long as the violations continue, compensate J. F. Battin, the regularly assigned Telegrapher-Clerk, or the occupant of relief position No. 12 on the rest days of the position, or his or their successors, a "call" as provided by Rule 5 of the Agreement, for each violation occurring outside assigned hours, and

3. The Carrier shall, in addition, compensate the senior idle employe, extra in preference, a day's pay of eight (8) hours at the rate of the Terminal Junction position for each eight (8) hour period during which a clerk, an employe not covered by the Telegraphers' Agreement at Terminal Junction, transmits or receives messages, orders or reports of record within the assigned hours of the Telegrapher-Clerk assigned to this location.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement between the parties to this dispute effective February 1, 1951 as to rates of pay, and February 1, 1952 as to rules, as amended.

At Page 58 of said Agreement is listed:

Terminal Junction.....Telegrapher-Clerk.....\$1.686

The Carrier, in its submission in this case, has conclusively shown that the claim is without merit and should be denied because:

1. The rules, as interpreted by over 40 years of custom and practice, do not support the claim.
2. The Employees, during such period, have attempted without success not only once, but on six different occasions (1933, 1937, 1939, 1947, 1954, and 1957), to secure through negotiation, the adoption of a rule which would support the claim.
3. The Employees are now attempting to secure (through an interpretation by this Board) what they have been unable to secure by negotiation on the property. The writing of new rules is not a function of this Board.

Without in any manner waiving its position as set forth above, the Carrier desires to make the following additional contentions:

1. The claim as made in behalf of unidentified "senior idle extra" employees is improper in that it is not a claim in behalf of a specific, named claimant as required by the language of Article V, Section 1(a), of the Agreement of August 21, 1954. (National Time Limit on Claims Rule).
2. In their handling on the property, the Employees have insisted on a check of the Carrier's records to determine the number of violations as here alleged. The various Divisions of the Board have held that the Carrier should not be expected to develop claims for unnamed employees on unspecified dates.

All that is contained herein is either known by or available to the Employees.

(Exhibits not reproduced.)

OPINION OF BOARD: On July 24, 1956, the Petitioner gave notice to Carrier of a claim being presented for a "senior idle employee" and also for a "Telegrapher-Clerk" at Terminal Junction, Ohio, one J. F. Battin, the contention being that Carrier violated the Telegraphers' Agreement by requiring or permitting employees, not covered by such agreement, "to handle communications of record at Terminal Jct. outside of the assigned hours of the Telegrapher Clerk."

The Statement of Claim as initially presented on the property on July 24, 1956, is as follows:

"1. Carrier is violating the Agreement whereas it is requiring and permitting trainmen, clerks and maintenance of way employees who are not covered by the Telegraphers' Agreement, to handle (send-receive-or deliver) communications of record at Terminal Jct. outside of the assigned hours of the Telegrapher-Clerk.

"2. A joint check of the Carrier's records shall be made to determine the amount of violations for which compensation will be paid.

"3. Carrier shall compensate:

"(a) the senior idle extra employe, one day's wages (8 hours) for each violation excepting where more than one violation occurs in the same 8 eight hour period for which, only one day's wages will be paid. Rate to be same as the Telegrapher-Clerk position at Terminal Jct., which is \$2.001 per hour.

"(b) Mr. J. F. Battin, Telegrapher-Clerk, Terminal Jct., one call (Rule 5) for each violation excepting where more than one violation occurs in the same two hour call period, for which only one call will be counted.

"No compensation is claimed for Mr. Battin for violations occurring when an extra employe qualifies under paragraph (a)". (Emphasis ours.)

The original claim was presented on the basis of an alleged violation occurring on account of certain work being performed outside the assigned hours of the Telegrapher-Clerk (6:00 P.M. to 3:00 A.M.) and request for compensation was made in behalf of (a) one senior idle extra employe, one day's wages, 8 hours for each violation and (b) for J. F. Battin but — "no compensation is claimed for violations occurring when an extra employe qualifies under paragraph (a)". The claim involved alleged violations "outside assigned hours" of the Telegrapher-Clerk was filed for Battin only in the event "a senior idle extra employe was not available."

The Petitioner, for the first time, attempts to amend the Statement of Claim herein initially presented by the Petitioner on the property when the claim is submitted to this Board. In the amended claim the "unnamed claimants" are now coupled with "orders or reports of record within the assigned hours of the Telegrapher-Clerk and request is made for the first time for a "call" for each violation occurring outside assigned hours for J. F. Battin in contrast to the original statement where he was to be compensated only if a senior idle employe was not available.

(Strangely, there is no competent evidence in the Record that any of the work complained of by employes outside of the Agreement was done within the assigned hours of the Telegrapher-Clerk.)

In addition to the foregoing, in the original Statement of Claim there is no allegation as to when the violations charged against the Carrier commenced; however, in the amended Statement of Claim submitted to the Board, we note the following — "The Carrier shall, because of the violations set forth above, commencing July 24, 1956, and thereafter so long as the violations continue . . ." The Record is completely devoid of any alleged violations occurring after July 24, 1956.

For the foregoing reasons we must conclude that the Statement of Claim presented to this Board is at variance with the Statement of Claim presented to the Carrier on the property. This Board is without any authority to amend claims. We must find that the practice resorted to herein is not in accord with the provisions of Circular No. 1 of the National Railroad Adjustment Board nor in compliance with Section 3 (1) of the Railway Labor Act, consequently, this Board has no other alternative than to dismiss this 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 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

For the reasons stated in the Opinion this claim must be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of November 1963.