

Award No. 12020
Docket No. TE-12059

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE AND HUDSON RAILROAD CORP.

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware and Hudson Railroad, that:

1. The Carrier violated the Agreement between the parties when and because it permitted or required employes not covered by the Agreement to handle the following train orders when no emergency existed:

Order No.	Date	Location	Train	Completed	Handled By
202	Apr. 14-59	Plattsburg	SRS-119	6:37 A. M.	Gardephe, Condr.
217	May 8-59	Beekmantown	EX-4002	4:04 P. M.	Gardephe, Condr.
222	May 8-59	Beekmantown	EX-4002	7:40 P. M.	Gardephe, Condr.
201	May 9-59	Plattsburg	EX-4002	5:58 A. M.	Gardephe, Condr.
202	May 9-59	Plattsburg	EX-4002	6:19 A. M.	Gardephe, Condr.
203	May 9-59	Plattsburg	EX-4002	6:31 A. M.	Gardephe, Condr.
Cleared	May 10-59	Plattsburg	EX-4096	5:40 A. M.	
201	May 10-59	Plattsburg	EX-4002	5:59 A. M.	Gardephe, Condr.
201	May 11-59	Plattsburg	EX-4002	5:07 A. M.	Gardephe, Condr.
Cleared	May 11-59	Plattsburg	EX-4002	5:45 A. M.	Gardephe, Condr.
208	May 11-59	Cy Siding	EX-4002	11:16 A. M.	Gardephe, Condr.
202	May 14-59	Plattsburg	EX-4053	5:27 A. M.	Poquette, Condr.
Cleared	May 20-59	Plattsburg	EX-4053	7:15 A. M.	

2. As a consequence of the above violations, Carrier shall now compensate Telegrapher R. E. Deso eight hours at \$2.332 per hour

for violation at Beekmantown on May 8, 1959; Telegrapher G. D. Francis for eight hours for violation at CY Siding on May 11, 1959 at \$2.332 per hour; Telegrapher P. M. Quinn one call or three hours at pro rata rate of \$2.332 per hour for April 14, May 14 and May 20, 1959, and G. D. Francis one call or three hours at pro rata rate of \$2.332 per hour for May 9, 10, and 11, 1959.

3. In handling the substantive and compensatory claims set forth in paragraphs 1 and 2, Carrier officer failed and refused to comply with provisions of Article 28 of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: There is 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 Employees or Telegraphers. The Agreement was effective April 1, 1957, and is, by reference, 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 dispute, and failed of adjustment. This Division, under the provisions of the Railway Labor Act, as amended, has jurisdiction of the parties and the subject matter.

This dispute arose when on the several dates shown in the claim train conductors handled train orders at Plattsburg, Beekmantown, and "CY" Siding. The submission to this Board includes two questions:

Question No. 1. Did Carrier violate provisions of Article 28 (Time Claims)?

Question No. 2. Did Carrier violate provisions of Article 23 (Handling Train Orders)?

The facts as developed in the handling of the dispute on the property are as follows:

1. On the 26th day of May, 1959, General Chairman R. E. Deso filed with Superintendent P. W. Young, claim as follows:

"The following claim is submitted account the following violations of the Telegraphers' Agreement:

STATEMENT OF CLAIM: The Carrier violated the agreement between the parties when and because it permitted or required employees not covered by the agreement to handle the following train orders when no emergency existed:

Order No.	Date	Location	Train	Completed	Handled By
202	Apr. 14-59	Plattsburg	SRS-119	6:37 A. M.	
217	May 8-59	Beekmantown	EX-4002	4:04 P. M.	Gardephe, Condr.
222	May 8-59	Beekmantown	EX-4002	7:40 P. M.	Gardephe, Condr.

that they should be sustained, payment should be for not more than 3 hours and 36 minutes at time and one-half rate for the alleged violation of May 8, 1959, and for a call for the alleged violation of May 11, 1959, as provided by Article No. 14-A of the applicable agreement.

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: Employees allege that Carrier failed to comply with that part of Article 28 A. 1 of the effective Agreement which provides:

“ . . . Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance.”

and that the claim must be “allowed as presented” as provided in the same subdivision of the Agreement.

At the first level of handling on the property, Superintendent P. W. Young wrote General Chairman Deso by letter dated June 17, 1959:

“Referring to your letter of May 26, 1959, submission in behalf of various telegraphers for payment of one day or a call, account train dispatchers issuing 19 orders and clearances to telegraphers who in turn gave them to conductors over the train dispatchers’ telephone.

We do not agree with your Statement of Facts beginning with the paragraph, ‘No emergency existed,’ as we feel this should be shown under ‘Contention of Employees’; also the last paragraph cannot be accepted as a ‘Fact’—it is an opinion.

The handling of 19 orders on May 8, given by train dispatcher to telegrapher at Plattsburg, to be given conductor at Beekmantown was according to long practice as there has been no telegrapher at Beekmantown in many years. Also, the same applies to the handling at CY siding on May 11, as there never has been a telegrapher employed at CY siding. The handling of the 19 order at Plattsburg on the dates listed in claim was the usual handling at points when telegrapher was not on duty.

These claims are similar to many other claims that have been submitted and denied account being without merit. The placing of 19 order pad and clearance cards in Plattsburg yard office is no different than having train order and clearance pads at any other way-side telephone.

Claim is denied in entirety.”

At the second level of handling on the property, General Superintendent of Transportation, K. E. Miller, wrote General Chairman Deso a letter dated August 18, 1959, saying in part:

“Decision: Rules of the Agreement were not violated and claim is therefore denied.”

At the third and final level of handling on the property, Manager of Personnel E. G. Young wrote General Chairman Deso a letter dated September 23, 1959, saying in part:

"Decision: The practice of other than telegraphers copying train orders at points where no telegrapher is employed or the station is not open has been in effect both prior to and during the life of the 1937 and 1944 Telegraphers' Agreements. Statements of several employes confirming that this practice has been in effect since 1913 are attached, marked Exhibits A to J. There was no rule included in the Telegraphers' Agreement effective April 1, 1957, which would make a continuation of this practice a violation of the current agreement.

Claims of R. E. Deso for a day's pay on May 8, 1959 account train orders copied by conductors at Beekmantown and CY Siding, points where telegraphers are not employed, are not supported by any rule of the agreement and are therefore denied.

Claims of Telegrapher P. M. Quinn for a call on April 14, May 14 and 20, 1959, and Telegrapher G. D. Francis for a call on May 9, 10 and 11, 1959, are being given further consideration."

Thereafter, all those parts of the claim involving the location "Plattsburg" were settled on the property and are not before this Board. The remaining parts of the claim, which involve the locations "Beekmantown" and "CY Siding," are before this Board for disposition herein.

Employes point particularly to the statement of General Superintendent of Transportation Miller (above quoted) as being fatally deficient. This Board in similar situations involving substantially similar language, considered with respect to Article V, 1(a) of the August 21, 1954 National Agreement, has held such language a sufficient statement of reason. Awards 11441 (Dolnick), 11231 (Sheridan) and 11208 (Coburn). While such brevity is hazardous, we deem the same sufficient under the facts and circumstances of this claim.

On the merits, the issues, herein are the same as in Docket No. TE-10541, Award No. 12015, and we adopt the opinion therein as determinative of the issues in the confronting claim.

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

That the parties waived oral hearing;

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 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 19th day of December 1963.