

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Colorado and Southern Railway, that:

1. The Carrier violated the parties' Agreement, including Appendix No. 9, when, on March 29, 1958, it permitted or required Conductor Nolan on Extra 155 South to copy train order No. 9 at Folsom, New Mexico, in the absence of an emergency, as defined in the Agreement.

2. The Carrier shall, because of the violation set forth above, pay C. D. Martinez, regularly assigned as agent-telegrapher at Folsom, New Mexico, a call.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective October 1, 1948, including changes and agreed-to interpretations as of the reissue date, January 1, 1955, and as amended, including rate of pay effective December 3, 1954.

At page 38 of said Agreement, Rule 38, is listed the position existing at Folsom, New Mexico, on the effective date of the Agreement. The listing is:

Location	Classification	Rate Per Hour
Folsom	A-T	\$1.785
	T	1.795

The telegraph position at Folsom represented by the symbol "T" in the above listing has, since the effective date of the parties' Agreement, been abolished. The remaining position, that of agent-telegrapher, is occupied by the claimant. He has an assigned work week Monday through Friday, Saturday and Sunday rest days.

On March 29, 1958, Extra 155 South in charge of Conductor Nolan, arrived at Folsom at 9:20 A.M. and copied train order No. 9 at 9:30 A.M. Appendix 9 of the parties' Agreement stipulates, among other things, that:

"Train and engine service employees will not be required nor permitted to copy train orders, or to block or report trains by tele-

first in default, cannot be heard to complain about the work being performed by Conductor Nolan.

The Board's attention is directed to Third Division Award 4577, between the same parties as the instant dispute, which considered these identical rules and sustained a claim for copying a train order by an Engineer at a point where no Telegrapher was employed. One of our asserted defenses in Award 4577 was that no Telegrapher was available to copy this order. On this point the Board found:

**Third Division Award 4577, ORT vs. C&S,
Refere Carter**

"Carrier contends that there was no telegrapher available to perform the work of handling the train order. The record shows that a telegrapher off duty on his rest day could have been called. This is all that is required as a basis for claim." (Emphasis ours.)

In the instant case, the record shows that Agent-Telegrapher Martinez was off duty on his rest day and every attempt was made to call him, but without success. The "basis for claim" is not present; the claimant could not be called since he had made himself unavailable for service.

(Exhibits not reproduced.)

OPINION OF BOARD: Because of an unforeseen delay to passenger train No. 8 on Saturday, March 29, 1958, the Train Dispatcher at Trinidad, Colorado, attempted to reach by phone the Folsom, Colorado Agent-Telegrapher (the Claimant in the instant matter) at about 8:50 A.M. to copy and deliver a "meet order". Saturday is one of the Claimant's regular days off. When the Train Dispatcher was unsuccessful in reaching the Claimant on the phone, he phoned the Section Foreman and asked him to try to locate him. The Foreman went to the Claimant's residence and found that he was not home, and (according to the statement from him quoted by the Carrier) looked for him "all over town", but without success. He, therefore, returned to the phone and informed the Train Dispatcher of the situation. The Dispatcher then directed the Conductor of Extra 155 South, which had arrived in Folsom in the interim, to copy the train order.

Extra 155 South arrived at Folsom at 9:20 A.M. The Carrier's undisputed statement is that this was thirty minutes after the Train Dispatcher began his efforts to obtain the services of the Claimant. The train order shows 9:31 A.M. as the time when Conductor Nolan copied it.

Is Appendix 9 a substitute for Rule 29? Our opinion is that Appendix 9 supplements Rule 29 rather than supplants it. They must both be read together in deciding on such a work-right question as the one which is before us.

Rule 29 says two things about the Telegraphers' right to handle train orders:

1. No other employe may handle such work where an operator is
 - (a) employe and is
 - (b) available, or
 - (c) can be promptly located.
2. If an emergency, however, arises, in which there is no opportunity to determine whether the operator is available or can be promptly located, the operator is to be paid for the call.

The Rule then refers us to Appendix 9 for the purpose of determining therefrom the definition of an emergency.

The facts before us do not require us to go to Appendix 9. The Carrier here did not utilize the "emergency" alternative. It did take cognizance of the possible availability of the employe assigned to this post (but off on that day). It is not disputed that the Train Dispatcher and Foreman attempted in good faith to locate the Agent-Telegrapher. They were unsuccessful in their efforts to "promptly locate" the Claimant. The Carrier thereby met its obligations under Rule 29.

There is no such requirement in Rule 29 for payment of time worked by a Carrier-drafted substitute under seek-and-fail conditions, as there is under an "emergency" situation where no search for the job-holder is made.

The only question which remains is whether an obligation survives under the Scope clause (Rule No. 1), to compensate the Claimant for operation of his job by another, even though the assigned operator was not available and could not be located and there was not an "emergency" situation.

We find against such a position on the facts here given.

Rule 29 deals with just such contingencies as occurred here. It provides for the operator to be paid for orders handled by others when an emergency precludes efforts to locate the operator. By not making the same provision for cases in which the effort has been made and failed, this Rule must be deemed to have intended to deny pay for such exigencies. In the face of a separate explicit provision on the subject, the Claimant cannot fall back on the general scope provisions of the Agreement.

Our conclusion is that we will best express fidelity to reasonable meaning of the Agreement terms on this subject and to previous Board interpretations on questions relating thereto, by denying the 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

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of March 1964.