

Award No. 12525
Docket No. TE-11194

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Lee R. West, 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 January 3, 1958, it caused, required or permitted Section Foreman Brobst, driver of Track Car 7358, and Section Foreman Wells, driver of Track Car 7301, to handle (receive, copy and deliver) track car permits at Mehoopany, Pennsylvania.

2. Carrier violated the Agreement between the parties hereto when on Friday, January 3, 1958, it caused, required or permitted Section Foreman Brobst, driver of Track Car 7358, to perform communication service of record in reporting track car 7358 clear of the main track at Laceyville, Pennsylvania, at a time outside the assigned hours of the Laceyville agent-telegrapher.

3. Carrier violated the Agreement between the parties hereto when on Friday, January 3, 1958, it caused, required or permitted Section Foreman Wells, driver of Track Car 7301, to perform communication service of record in reporting Track Car 7301 clear of the main track at Wyalusing, Pennsylvania, at a time outside the regular assigned hours of the Wyalusing agent-telegrapher.

4. Carrier shall compensate L. G. Wilcox, extra list employe of the Seneca District, who was idle and available for service on January 3, 1958, for eight (8) hours at minimum telegrapher (telephoner) rate for such District, account the violation set forth in Item 1 of this claim.

5. Carrier shall compensate F. W. Bahr, agent at Laceyville, Pennsylvania, for a two-hour call at time and one-half the rate of the Laceyville agent-telegrapher position, account the violation set forth in Item 2 of this claim.

6. Carrier shall compensate George Gaylord, Jr., agent at Wyalusing, Pennsylvania, for a two-hour call at time and one-half the rate of the Wyalusing agent-telegrapher position, account the violation set forth in Item 3 of this claim.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining Agreement entered into by and between Lehigh Valley Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement was effective on the 1st 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.

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. This Division, under the provisions of the Railway Labor Act, as amended, has jurisdiction of the parties and the subject matter.

Although there was only a single dispute handled on the property, the claim actually involved violations at three different points, although all occurring on the same date and within a relatively short time. Paragraph No. 1 of the Statement of Claim involves violation at Mehoopany. Paragraph No. 2 involves violation at Laceyville. Paragraph No. 3 involves violation at Wyalusing. The basis of the violations was requiring or permitting drivers of track motor cars to receive at Mehoopany track car permits enabling the operation of the track motor cars on the main lines. The violations at Laceyville and Wyalusing involved the transmission by the drivers of the track cars of reports of record, that is, an "OS" of the time of their arrival and clearing of the main track at those points. The Telegraphers contend that the performance of this work by drivers of the track cars was in violation of the rules of the collective bargain in that the performance of such work is exclusively reserved to employees covered by our Agreement.

The facts as stipulated by the parties in handling the claim on the property are as follows:

1. Mehoopany, Pennsylvania, is a point on Carrier's railroad where no employees covered by Telegraphers' Agreement are regularly assigned.

2. That on the 3rd day of January, 1958, Section Foreman Brobst was the operator and driver of Track Car No. 7358 then at Mehoopany, Pennsylvania. That Section Foreman Brobst is an employee engaged in track maintenance and does not hold seniority rights under the Telegraphers' Agreement.

3. That on January 3, 1958, Section Foreman Wells was the operator and driver of Track Car No. 7301, then at Mehoopany, Pennsylvania. That Section Foreman Wells is an employee engaged in maintenance of tracks and does not hold seniority under the provisions of the Telegraphers' Agreement.

4. That at 5:55 P. M. on January 3, 1958, Section Foreman Brobst, while at Mehoopany, received by the use of the telephone from the operator on duty at Coxton and made copy on the form hereinafter shown of track car permit in words and figures as follows:

sary. It is well established by the various awards of this Division that the burden of putting forth facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance. (See Award Nos. 4011, 4758, 6054, 6075, 6359, 6824, and many others.)

The Employees have submitted no concrete evidence to show that the practices complained of herein have been other than as indicated by Carrier's evidence.

The Carrier respectfully submits that this claim in its entirety is without merit and requests the Board to deny the claim.

OPINION OF BOARD: A part of this claim arises by reason of a track car operator's handling of track car permits at Mehoopany, Pennsylvania. The Organization contends that this violates the Agreement and that the senior employe of the Seneca District should be compensated for eight (8) hours at the minimum telegrapher (telephoner) rate. However, there being no telegraph station at Mehoopany, Parts 1 and 4 of the claim are not distinguishable from Award 8146 (Elkouri) and Award 8540 (Coburn) and is therefore denied.

Parts 2, 3, 5 and 6 of the claim arise by reason of track car operator's reporting clear from Laceyville and Wyalusing by telephone to the nearest telegraph operator on duty. This claim is distinguishable from the above claim in that at both of these stations a telegraph office is maintained. It is conceded that such reports would have been performed by the agent-telegrapher at each of these stations except for the fact that they were made at a time outside the assigned hours of the agent-telegrapher at the respective stations. The question turns on whether or not an off-duty telegrapher should be allowed an overtime call when a track car report is made at his station when he is off-duty. We hold in the affirmative.

It appears that the Carrier has conceded that track cars will be governed by the same rules and instructions as trains. See Awards 8146 and 8540. This being so, reports of track car movements are treated the same as reports of train movements. By a long line of awards, including 8263, 8264, 11722 and 11848, report on train movements have been held to be work exclusive to telegraphers. Further, Awards 4458 and 4516 held that the use of a telephone in lieu of a telegraph was a communication of record and belonged exclusively to telegraphers. We therefore hold that reports of track car movements is also work exclusive to the telegraphers where there is a telegraph station in existence at the point where the telephone report is made. It being so held, it follows that the off-duty telegrapher at Laceyville and Wyalusing should be allowed a call for the work done which belonged exclusively to them. Parts 2, 3, 5 and 6 of the claim should be sustained.

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 Employees involved in this dispute are respectively Carrier and Employees 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 has been violated in part.

AWARD

Parts 1 and 4 of the claim denied.

Parts 2, 3, 5 and 6 of the claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of May 1964.