

Award No. 12702

Docket No. TE-11339

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

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

1. Carrier violated the Telegraphers' Agreement when on the 25th day of December, 1957, it caused, required or permitted Conductor Williams to use the block telephone at Hamburg, S. C., and communicate with Union Station in Augusta, Ga. Clerk Telegrapher W. R. Hagood was ready and available to perform this work, but was not called.

2. Carrier shall compensate W. R. Hagood, Clerk Telegrapher, Hamburg, S. C., for 8 hours at time and one-half rate of pay.

EMPLOYES' STATEMENT OF FACTS: At Hamburg, South Carolina, there is a negotiated position of Clerk Telegrapher, which is a seven-day position. The assigned hours of the position are 8:00 A. M. to 4:00 P. M., Monday through Sunday, with Saturday and Sunday as assigned rest days. Hamburg, South Carolina, is near the vicinity of Augusta, Georgia. Train No. 31 is a regular scheduled passenger train, labeled the Augusta Special, and leaves Charlotte, North Carolina, at 3:30 A. M., arriving at 9:55 A. M., at Augusta, daily. Claimant W. R. Hagood is the regular assigned Clerk Telegrapher at Hamburg, South Carolina. Wednesday, December 25, 1957, was one of the work days of Claimant Hagood's position. The Carrier notified Claimant Hagood that he would not work December 25, 1957, which is one of the holidays.

At or about 10:45 A. M., Conductor Williams of Train No. 31 used the telephone at Hamburg, South Carolina, to obtain a block for Train No. 31 from Hamburg to Union Station, Augusta. Claim was made in behalf of Mr. W. R. Hagood, who was entitled to be called to perform the work of blocking the train at Hamburg on December 25, 1957. The claim was appealed to the highest officer designated by the Carrier to handle same, and declined by him. The claim is now properly before your Board for final adjudication.

POSITION OF EMPLOYES: The following rules of this Agreement are cited for your ready convenience:

day, and no work was required or performed, claimant here plainly seeks, under the guise of an agreement violation, to circumvent the provisions of Rule 6 and to demand pay as though he had been required to work on the holiday. Carrier has shown that the effective agreement was not violated and respectfully requests that the claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim alleges a violation of the effective Telegraphers' Agreement when a train conductor used the telephone at Hamburg Yard Office (Augusta) and called the operator on duty at Walker Street, Augusta Union Station for verbal permission to proceed from Reynolds Street to Augusta Union Station.

It is undisputed that a seven-day position of Clerk Telegrapher was occupied by Claimant Hagood at Hamburg. The assigned hours of the position were 8:00 A.M. to 4:00 P.M., Monday through Sunday, with Saturday and Sunday as assigned rest days. It is also undisputed that Wednesday, December 25, 1957, a designated holiday, was one of the work days of Claimant Hagood's position, and that he had been notified not to work on that day, receiving the holiday allowance therefor of eight hours' pay at the pro rata rate of his position.

It appears from the record that if the Claimant had been on duty at Hamburg (as he otherwise is at that time of day) he would have transmitted the message to the operator at Walker Street, who was in charge of movements between Reynolds Street and Augusta Union Station. According to special time table instructions which had previously been issued and were then in existence (Carrier's Exhibit A), train movements between Hamburg and Augusta are subject to prior receipt of either (a) "proceed train order signal", (b) block card, Form 603", or (c) "authority by telephone from operator in charge of block which will supersede time table superiority and will take the place of train orders" (Rule 241). Rule 241 also specifies that conductor in charge is to obtain "telephone authority" before entering block.

We do not find that the just-cited provisions of the Special Instructions establish a practice of the conductors' use of the telephone for clearance. There is nothing therein to show that the "telephone authority" referred to could not and was not usually obtained via the telegrapher on duty.

The Carrier calls our attention to the fact that the foregoing Rule 241 in the timetable instructions states that said instructions are in effect at Hamburg-Augusta from 8:00 A.M. to 4:00 P.M., except Saturday and Sunday. This does not refute the contention that during these hours, train and engine movements between Reynolds Street and beyond are conveyed to the operator at Walker Street (who is in charge of said controls) by way of the operator at Hamburg (the Claimant).

It should be noted that the day on which the message in issue was sent was neither a Saturday or Sunday, and accordingly, it will not contribute to our analysis to examine the effect of those exceptions, if any, on the practice which prevailed on other days.

Rule 1 explicitly lists the work of block operators as covered by the Telegraphers' Agreement.

The debate between the parties as to whether the communication in question constituted a "train order" within the meaning of Rule 31, must be decided in favor of the Petitioner. Carrier's Exhibit A (timetable instructions) treats such communications as a variant of train order, saying explicitly that "authority by telephone from operator in charge of block . . . will take the place of train order." The explanatory letter of October 19, 1929, accompanying Rule 31 in the Agreement, makes it clear that the conductor's role in the interchange of request and response in such situations is encompassed by the concept of a train order and that it is thereby barred to conductors "except in emergency" or via phone to "the nearest telegraph station." The first of these situations was not shown to have here existed; the second was not complied with.

Under these circumstances, it is not determinative that the message was handled in oral form.

The Carrier raises a question concerning the remedy sought, if violation is found. It is contended that the payment of eight hours' pay at time and one-half for a few minutes' conversation is inappropriate and inapplicable as redress, considering especially that the Claimant had already been paid for that day at his regular rate of pay (as a day-off holiday).

The applicable Agreement provisions give us no choice on this subject. Rule 17 is specific and unambiguous in its requirement that employees occupying seven-day positions be paid at time and one-half for a minimum of eight hours when required to work on a specific holiday. It thereby supercedes the general requirement in Rule 10 for a lesser payment for "work outside of established hours", inasmuch, especially, as Rule 10 allows for just such specificity as is expressed in Rule 17, by the statement in the former: "Except as otherwise provided in these rules."

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 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 was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of July 1964.