

Award No. 13390
Docket No. TE-12570

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

READING COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Reading Lines (Reading Company) that:

1. Carrier violated the Agreement between the parties when and because it requires and permits train service employes to handle communication of record at Topton, Pennsylvania, outside the assigned hours of the Agent-Telegrapher, thereby violating Scope Rule 1 of the Telegraphers' Agreement.

2. In consequence thereof the Carrier shall be required to pay M. Havertine or A. Severs or any senior idle telegrapher a day's pay at the minimum rate of pay for each violation stated herein and on all subsequent dates when in violation of the Agreement telegraphers were not assigned to handle the communication of record in accordance with the Telegraphers' Agreement.

3. Carrier shall be required to permit joint check of records to ascertain dates when such violations occurred and to determine senior idle extra telegrapher or senior idle telegrapher.

On the following dates the Carrier required and permitted train service employes to handle train orders at Topton, Pennsylvania, outside the assigned hours of the Agent Telegrapher:

Date	Order No.	Time	To	Copied by	Title
10/30/59	219	1:55PM	C&E Ex 488 West	H. Adams	Conductor
11/ 2/59	224	1:44PM	C&E Ex 447 West	H. Adams	Conductor
11/ 4/59	224	1:39PM	C&E Ex 616 West	H. Adams	Conductor
11/ 6/59	220	1:05PM	C&E Ex 611 West	H. Adams	Conductor
11/11/59	215	1:20PM	C&E Ex 447 West	H. Adams	Conductor
11/13/59	230	2:18PM	C&E Ex 487 West	H. Adams	Conductor
11/17/59	215	11:18AM	C&E Ex 624	H. Adams	Conductor

11/17/59	217	11:51AM	C&E Ex 624 West	H. Adams	Conductor
11/20/59	231	2:50PM	C&E Ex 482 West	H. Adams	Conductor
11/22/59	220	2:01PM	C&E Ex 604 West	H. Adams	Conductor
11/23/59	220	2:12PM	C&E Ex 628 West	H. Adams	Conductor

EMPLOYES' STATEMENT OF FACTS: 1. There is in full force and effect collective bargaining Agreement entered by and between Reading Company, Philadelphia, Reading & Pottsville Tel. Co., hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was effective September 1, 1946, as corrected September 1, 1951. The Agreement is by reference made a part of this submission as though set out herein word for word.

2. The dispute submitted herein was handled on the property in the usual manner through the highest officer designated by the Carrier to handle such disputes and failed of adjustment. This Board has jurisdiction of the parties and the subject matter under the provisions of the Railway Labor Act, as amended.

3. Article 34 of the Agreement between the parties provides:

"No employe other than covered by this schedule and Train Dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the Telegrapher will be paid for the call."

4. At Topton, Pennsylvania, prior to August 22, 1958, in accordance with Agreement rules an employe covered by Telegraphers' Agreement was assigned full eight hours of service Monday through Friday of each week. (Page 41, printed Agreement). Effective August 25, 1958, acting unilaterally, combined the positions at Mertztown (See Page 40, printed Agreement) and Topton, and classified the single position as Agent-Telegrapher (dual agency).

5. Hours of service were assigned effective August 25, 1958, as follows:

Topton	8:00 A.M. — 10:45 A.M.
Mertztown	12:00 N. — 2:45 P.M.
Topton	3:00 P.M. — 5:00 P.M.
Meal Period	11:00 A.M. — 12:00 N.

Assigned Rest Days — Saturday and Sunday

6. At all times relevant to the claim submitted herewith the hours of service, locations, and rest days remained the same.

7. In Time Table No. 11, effective 2:01 A. M., Sunday, October 25, 1959, (and which was in effect at all times involved herein) (Reading and Shamokin Divisions) Topton with station call letters of "FH" was designated as train order office in special instructions shown at Page 43, as follows:

"All train order offices designated by letters TO in classified schedules of trains are open continuously, except as noted in tables below.

* * *

OPINION OF BOARD: On August 25, 1958, the Carrier combined positions at Mertztown and Topton to create a single dualized position of Agent-Telegrapher. On the dates listed in the claim, Conductor Adams received, copied and delivered train orders at Topton by telephone. The Organization filed the instant claim for payment to "... M. Havertine or A. Seavers or any senior idle telegrapher ..." for a day's pay for each violation.

Article 34 of the parties' Agreement specifies:

"No employe other than covered by this schedule and Train Dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the Telegrapher will be paid for the call."

This Board has held that the performance of these tasks by a conductor is a violation of Article 34 (13266-69 Referee Moore) and we concur with the findings therein.

The essential question in this case is that of the proper remedy. The Organization contends that payment on a minimum eight hourly daily basis is proper for all Claimants, because "the violations were deliberate, willful and wanton". It argues that the Carrier, by its abolishment of the Topton position deprived the Organization of a position, entitling the man thus deprived of compensation for the one full day's work lost by each violation, citing Article 3 the Basic Day Rule. The Organization concludes that the Carrier's argument that extra employes are not entitled to recover damages was not raised on the property and may not be considered by this Board.

The Carrier contends that the language governing recovering is set forth in Article 34, limiting recovery to "the" telegrapher denied the call, rather than to any senior idle telegrapher. It points out that the telegrapher was otherwise employed and is therefore not entitled to compensation at the daily rate requested by the Organization.

The Organization's contention that Carrier has raised new arguments relative to recovery lacks merit. Article 34, the basis of this claim, makes specific reference to recovery, and its interpretation is a matter that has been under discussion since the commencement of this proceeding.

Recovery in this case is limited to the incumbent telegrapher. Article 34 specifically refers to "the" telegrapher employed and available. Thus, to extend protection beyond this individual would constitute a rewriting of the parties' Agreement. In this way, too, the specific limitations upon right of recovery distinguishes this case from those cited by the Organization (6063 et seq).

When the telegrapher was otherwise employed during the instances complained of, he was being fully compensated, although he had a right to be called for the work. In such a circumstance, a nominal payment of \$1 damages for each such call is proper.

The telegrapher is also entitled to compensation for earnings lost by virtue of the Carrier's failure to call him while on his non-compensable lunch hour. Payment of an amount equal to what he would have earned if

required to work during his lunch hour for each violation is therefore in order.

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 was violated.

AWARD

Claim sustained to the extent indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February 1965.