

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Murray M. Rohman, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven and Hartford Railroad, that:

Claim No. 1

1. On Tuesday, February 6, 1962, it required and permitted a train service employe to copy a train order at Williamsburg, Massachusetts.

2. Carrier shall compensate R. A. Pageau, senior idle available extra employe, a day's pay (8 hours) at the adjusted rate of the former agent-operator position at Williamsburg, totaling \$19.76. (Railroad Docket 9222)

Claim No. 2

1. On Friday, February 16, 1962, it required and permitted a train service employe to copy a train order at Munson Street, New Haven, Connecticut.

2. Carrier shall compensate E. Rowe, a senior idle available extra employe, a day's pay (8 hours) at the minimum rate on the Hartford Seniority District, totaling \$19.02. (Railroad Docket 9289)

EMPLOYEES' STATEMENT OF FACTS: The facts relative Claim No. 1 are given first, and follow. Williamsburg, Massachusetts, is the terminus of a 7.68 mile branch line which spurs off at Northampton, Massachusetts.

The parties agreement dated September 1, 1949 shows the following listings (Page 55):

LOCATION	OCCUPATION	NO. OF POSITIONS	RATES
Williamsburg	Agent-Operator	1	1.57

The position at Williamsburg was abolished in 1952 or 1954. The record is not clear which is the correct year, but the fact remains that there was an

Errata on page 4 of Third Division Award 14495, Docket No. TE-14193
also in Volume 159

Mr. Pageau, who resided some 90 miles from the point where this service was required, would not be considered available within terms of the cited award and the claim in his behalf is denied.

Very truly yours,

/s/ J. J. Duffy

J. J. Duffy

Director, Labor Relations & Personnel

There is further correspondence in which the Employees try to show that the distance between Williamsburg and New Haven and the inability of the claimant to cover the service are both irrelevant facts.

Attached as Exhibit "E" is the General Chairman's reply of October 18, 1962, to carrier's decision.

Attached as Exhibit "F" is a further letter by carrier dated October 25, 1962, in answer to certain allegations of the General Chairman.

Claim No. 2

This claim, as in Claim #1, involves action of a conductor copying a train order at Munson Street, New Haven, Connecticut.

On February 16, 1962, the date of the claim, a snow flanger was operated between Plainville, Connecticut, and New Haven, Connecticut. Upon arrival in New Haven terminal the flanger stopped at Munson Street (a city street crossing) and the conductor used the crossingman's telephone to call for a train order authorizing his return move to Plainville. This order was relayed to the conductor by the operator at Plainville. Had the conductor elected to do so, he could have continued down into the New Haven terminal and picked up his return orders personally.

A claim, attached as Exhibit "G," was presented by the Telegraphers that a spare employe, Earle Rowe, should have been called to copy the order at Munson Street. Mr. Rowe resided in Colchester, Connecticut—fifty miles distant by highway (there was no rail transportation available.)

This claim was denied by the Superintendent (Exhibit "H"), on the basis that the only reason for copying the order at Munson Street was to permit the flanger to turn there and save the inconvenience of continuing the additional two miles within the terminal to the train order office, and the claimant was not available to cover the service.

Attached as Exhibit "I" is General Chairman's appeal dated July 2, 1962, from the Superintendent's decision.

Carrier's final decision dated August 6, 1962, is attached as Exhibit "J."

A copy of the Agreement between the parties is on file with your Board and is, by reference, made a part of the submission.

OPINION OF BOARD: Two claims were submitted by the Organization predicated on a violation of Article 20 of the effective Agreement. Claim No. 1 involves the copying of a train order by a train conductor at Williamsburg, Massachusetts. On February 6, 1962, the conductor of a local freight, in order to avoid a violation of the Hours of Service Law, communicated with the train dispatcher at New Haven and copied a train order authorizing a return move to the terminal. Consequently, Operator Pageau submitted a claim for one day's pay on the basis that he should have been called to copy this train order.

Similarly, Claim No. 2, involves the copying of a train order by a conductor. On February 16, 1962, a snow flanger operated between Plainville and New Haven, Connecticut. Upon arrival in the New Haven terminal, the

flanger stopped at a city street crossing and the conductor telephoned for a train order authorizing his return move to Plainville. Thereafter, a claim was filed on behalf of Operator Rowe, an extra employee, for a day's pay.

In support of these claims, the Organization cited Case No. 12 of Special Board of Adjustment No. 306, wherein Referee Whiting interpreted Article 20 and sustained a claim "for the senior extra qualified employe available, if any."

On the other hand, the Carrier resists these claims on the ground that there is no express contract requirement that the Claimants be called for this work; that the use of the telephone by conductors to copy train orders at points where no operator is employed is not the exclusive work of the Telegraphers; that the Claimants in particular had no right to such work, either under the terms of the contract or under prior settlements on the property.

Article 20 of the effective Agreement provides as follows:

"ARTICLE 20 HANDLING TRAIN ORDERS

(a) No employe other than covered by this agreement and train dispatchers will be permitted to handle train orders except in cases of emergency.

(b) If train orders are handled at stations or locations where an employe covered by this agreement is employed but not on duty, the employe, if available or can be promptly located, will be called to perform such duties and paid under the provisions of Article 7, if available and not called, the employe will be compensated as if he has been called."

It appears to us that Referee Whiting's award, previously cited, is dispositive of the issue. However, the phrase, "if any" may not be ignored. It has significance in the context in which it was employed. Hence, in the instant claims, the Carrier indicated that Operator Pageau resided ninety miles from Williamsburg and Operator Rowe resided fifty miles from New Haven. Contrariwise, the Organization has failed to rebut such proof nor did it attempt to demonstrate on the property that these Claimants were available. It is, therefore, our considered opinion that although Article 20 was violated, these Claimants are not entitled to any payment.

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

Claims sustained, reparation denied, in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 6th day of June 1966.