

Award No. 14657
Docket No. TE-12846

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)**

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Railroad that:

1. The Carrier violated the agreement between the parties when it permitted or required employes other than covered by the Telegraphers' Agreement to handle train orders at Stringtown, Oklahoma, as follows:

Order No. 29 copied by train crew member of Extra 76-A North at 2:34 A. M., October 15, 1960.

Order No. 165 copied by train crew member of Extra 135 South at 11:24 P. M., October 15, 1960.

Order No. 94 copied by train crew member of No. 52 at 5:05 P. M., October 16, 1960.

Order No. 96 copied by train crew member of No. 52 at 5:14 P. M., October 16, 1960.

2. Because such orders were handled in the absence of an emergency, Claimant W. E. Hurt is entitled to be compensated a day's pay for each date at the minimum rate per day for telegraphers as set forth in the agreement.

EMPLOYEES' STATEMENT OF FACTS: At 2:34 A. M., October 15, 1960, at Stringtown, Oklahoma, a train crew member on train Extra 76A North, an employe not covered by the Telegraphers' Agreement, copied (from the train dispatcher) and delivered train order No. 29 addressed to Extra 76A North, reading:

"No. 41 Eng. 72A wait at Kiowa until 3:20 A. M. Burg 3:35 A. M. for Extra 76A North."

"RULE 4. SENIORITY

(a) Employees covered by these rules are in line for promotion and where qualifications are sufficient seniority will prevail. Seniority will date from last entrance to the service on each district.

(b) Seniority of employees will date from the day on which actual work was first performed on their seniority district in any class of service covered by this agreement after sixty (60) days of service.

(c) Seniority will be effective only when vacancies occur or new positions created or as provided in Rules 3, 5, 7 and 18.

(d) Employees dismissed from the service of the Railroad and reinstated by agreement shall not lose their seniority. Employees who leave the service voluntarily and are reemployed will rank as new men.

(e) Seniority list of employees covered by these rules, showing date of last entrance to the service and including men on extra list will be bulletined by the Superintendent during January and July of each year. Copies to be furnished to General Chairman."

"RULE 7. POSITION CLASSIFICATION

(a) Where payroll classification does not conform to Paragraph (a) of Rule 1, employees performing service in the classes specified therein shall be classified in accordance therewith.

(b) Employees whose duties are other than those enumerated in Rule 1 are not included in the provisions of these rules."

The claims were declined at all stages of the handling on the property as indicated in copy of the correspondence attached hereto and made a part hereof, Carrier's Exhibit A.

OPINION OF BOARD: Our decision herein is governed by that in Award Number 14656. Claimant W. E. Hurt is the regularly assigned Agent-Telegrapher at Stringtown, Oklahoma. He lives in McAlester — 36.6 rail miles from Stringtown. In the light of such facts, common sense would seem to support Carrier's position that Claimant is ipso facto not available nor can be promptly located as required by Rule 1 (e) of the Agreement. We must also consider, however, that Claimant, while living a considerable distance away, makes himself available at Stringtown during his regular 5 day assignment. The work in question is his by the Agreement. If it is impractical to call him to make a 73 mile trip for a small chore for which he is entitled to only two hours' pay, then such will soon appear after Carrier has made bona fide efforts to call him or ascertain his ability. Failing such, Carrier is estopped to now assert his unavailability. Award 14052 (Dorsey).

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 violated.

AWARD

Claims sustained only for a call for each violation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of July 1966.

CARRIER MEMBERS' DISSENT TO AWARD 14657, DOCKET TE-12846 (Referee Brown)

We concur with the Majority in finding that Rule 1 (e) (Standard Trail Order Rule) and not Rule 1 (d) is applicable to stations where an agent-telegrapher is employed and not on duty, but who is available or can be promptly located.

The dissent filed to Award 14656 is adopted for our dissent to Award 14657.

W. M. Roberts
G. L. Naylor
C. H. Manoogian
R. A. De Rossett
H. K. Hagerman