



**Award No. 15939**  
**Docket No. TE-15239**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Bill Heskett, Referee**

**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**  
**(Formerly 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:

**CLAIM NO. 1**

1. Carrier violated the Agreement between the parties hereto when and because on February 27, 28, March 1, 3, 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31, April 1, 2, 3, 4 and 5, 1963, it required or permitted an employe not covered by Telegraphers' Agreement to perform communication work of record at Rochester, New York, involving the movement of trains, as set forth on sheets A-1, A-2, A-3, A-4 and A-5 which are attached hereto and made a part of this claim.

2. Carrier violated the provisions of Article 3 of the Agreement dated February 15, 1961, when and because it failed or refused to pay the telegraph service employe (Buffalo Seniority District), who stood first out on the extra list at the time the involved communication work of record was performed at Rochester, New York, February 27, 28, March 1, 3, 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31, April 1, 2, 3, 4 and 5, 1963, for 8 hours to cover each of those days, at the hourly rate of \$2.7108, account communication work of record involving the movement of trains, as set forth on sheets A-1, A-2, A-3, A-4 and A-5, attached hereto, being performed at Rochester, New York, by a train crew member on each of the 32 days herein involved.

3. Carrier shall now pay the telegraph service employe of the Buffalo District who stood first out on the extra list at the time the involved communication work of record was performed at Rochester, New York, each date, February 27, 28, March 1, 3, 4, 5, 6, 7, 8, 10, 11, 13, 14, 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 31, April 1, 2, 3, 4 and 5, 1963, for 8 hours (Rule 10) at \$2.7108

per hour to cover each of the 32 days herein involved account the violations set out in items 1 and 2 next above. The names of the extra employes who stood first out appear on sheet A-6 which is attached hereto and made a part of this claim. They are the named claimants in this case, except that Carrier's records differ.

4. Carrier shall permit a joint check of its records to ascertain the name of the extra employe who stood first out at the time the communication work of record involving the movement of trains was performed at Rochester, New York, on each of the 32 days involved in this claim.

## CLAIM NO. 2

1. Carrier violated the Agreement between the parties hereto when and because on April 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30, May 1, 2, 3, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21 and 22, 1963, it required or permitted an employe not covered by the Telegraphers' Agreement to perform communications work of record at Rochester, New York, involving the movement of trains, as set forth on sheets B-1, B-2, B-3, B-4, B-5 and B-6 which are attached hereto and made a part of this claim.

2. Carrier violated the provisions of Article 3 of the Agreement of February 15, 1961, when and because it failed or refused to pay the extra telegraph service employe (Buffalo Seniority District) who stood first out at the time the involved communication work of record was performed at Rochester, New York, April 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30, May 1, 2, 3, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21 and 22, 1963, for a period of 8 hours to cover each of those days, at the hourly rate of \$2.7108, account communication work of record involving the movement of trains, as set forth on sheets B-1, B-2, B-3, B-4, B-5 and B-6 attached hereto, being performed at Rochester, New York, by a train crew member on each of the 39 days herein involved.

3. Carrier shall now pay the telegraph service employe of the Buffalo District who stood first out on the extra list at the time the involved communication work of record was performed at Rochester, New York, each date, April 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 28, 29, 30, May 1, 2, 3, 5, 6, 7, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 21 and 22, 1963, for 8 hours (Rule 10) at \$2.7108 per hour to cover each of the 39 days herein involved account the violations set out in items 1 and 2 above.

4. Carrier shall permit a joint check of its records to ascertain the name of the extra employe who stood first out at the time the communication work of record involving the movement of trains was performed at Rochester, New York, on each of the 39 days involved in this claim. Sheet B-7 attached hereto contains the name of the extra employe who stood first out at the time of violation each day according to our records. They are the named claimants except that Carrier's records differ.

### CLAIM NO. 3

1. Carrier violated the Agreement between the parties hereto when and because on May 23, 24, 26, 27, 1963, and on days subsequent thereto it required or permitted an employe not covered by Telegraphers' Agreement to perform communication work of record at Rochester, New York, involving the movement of trains.

2. Carrier violated the provisions of Article 3 of the Agreement of February 15, 1961 when it failed or refused to pay the extra telegraph service employe of the Buffalo Seniority District who stood first out at the time communication work was performed at Rochester, New York, May 23, 24, 26, 27, 1963, and days subsequent thereto, for 8 hours at the applicable rate of pay to cover each violation which occurred when communication work of record involving the movement of trains was performed at Rochester, New York, by a non-scope employe.

3. Carrier shall pay the telegraph service employe of the Buffalo District who stood first out on the extra list at the time the involved communication work of record was performed at Rochester, New York, May 23, 24, 26, 27, 1963, and days subsequent thereto, for 8 hours (Rule 10) at the applicable rate to cover each violation of our Agreement at Rochester, as set out in item 1 and 2 above.

4. Carrier shall permit a joint check of its records to determine when each violation occurred and to ascertain the name of the extra employe who stood first out at the time of each violation. Sheet C-1 attached hereto is made a part of this claim. It contains record of violations of May 23, 24, 26 and 27, 1963. It also contains the name of the extra employe (claimant) who stood first out at the time of each violation, May 23, 24, 26 and 27, 1963.

**EMPLOYEES' STATEMENT OF FACTS:** This submission involves three separately handled disputes, but for convenience due to similarity of issues have been combined into this single submission as Claim No. 1, Claim No. 2 and Claim No. 3.

The correspondence exchanged between the parties in the property handling of each of the claims is reproduced and attached hereto as ORT Exhibits, under the respective Claim Number.

The issue involved in each claim was brought on by the same circumstances, and Claims Nos. 2 and 3 merely represent claims for dates subsequent to those specified in Claim No. 1.

A review of the correspondence will fully disclose that the facts of the cases, the details and incidents relative thereto, the basis for the claims, the respective positions of the parties, arguments by each in support of their position, and the area of disagreement, are simply manifested in the documented record. With the exhibited correspondence being part of this submission, there is therefore no need for reiteration of those points, except to the extent touched upon in the Position of the Employees.

The claim is further rejected as having no merit and is unsupported by any rule of the agreement."

The General Chairman then appealed the Superintendent's denial decision to the Chief of Personnel in letter dated October 3, 1963. Conference for the purpose of discussing this claim was scheduled and held on November 22, 1963. The Chief of Personnel denied this claim in letter dated November 27, 1963, to the General Chairman as follows:

"You claim Rule 1 of the current agreement provides that telegrapher employes have always had the exclusive right to perform the work complained of in this claim. The telegrapher agreement employee, located at Rochester, did not perform this work and has never had exclusive right to perform the work complained of and made a basis of this claim.

You refer to rules 2 and 10 of the agreement, the rules have not been violated in this instance and they lend no support to your contentions.

You further quoted Article 3 of the agreement dated February 15, 1961 claiming same provides that management automatically pay the employee first out on extra list when communication of record work is performed by a non-telegrapher. I do not agree with your contention, such was not the intent of the agreement. Further, there was no violation of any rule or agreement in this instance and no employee is entitled to receive any payment.

As refers to Items 3 and 4 of your claim: The agreements in effect on this property require that a claim to be properly presented for consideration must have a named claimant. It appears you are asking payment of a day's pay for two employees, the employee standing first out on the extra list in item No. 3 and the employee developed by a search of Carrier's records or named by you in item No. 4. You have no rule under which you can demand two days' pay for two employees under the same alleged rule violation. As your claim is vague as to a named claimant, it is not properly presented and is rejected for that reason. The attaching of your sheet A-6 listing names of extra employees whom are presumed to be the claimants and then in item No. 4 also state they are not the claimants, if a search of Carrier's records proves differently, does not meet the requirements of the rules currently in effect.

Therefore, the claim in this case along with having no definite named claimants, is without support of rules or practices and is hereby denied."

Other than the dates of the claims and employees who might be involved, the facts, circumstances, arguments and rules involved in claims numbered 2 and 3 are the same as those in claim number 1, as to the merits of the claims only the facts involving claim number 1 will be given.

(Exhibits not reproduced.)

**OPINION OF BOARD:** In order to make out a prima facie case, the Organization must show that the communications complained of were such

that they would belong to the Craft exclusively under the Scope Rule or by tradition and practice. Here, neither exclusivity or the actual character of the communications is established by the Organization and the claims must be denied.

**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 not shown to have been violated.

#### AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1967.