Award No. 16781
Docket No. TE-14993

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

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

THE LEHIGH AND HUDSON RIVER RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Lehigh and Hudson River Railway, that:

1. Carrier violated the provisions of Agreement between the parties when, commencing January 6, 1964, it permitted or required train service employes who are outside the coverage of the Agreement, to handle (receive, copy and deliver train orders) at Maybrook, New York.

2. Carrier shall be required to properly assign this train order and communication work to operators under Telegraphers' Agreement.

3. Carrier shall now compensate the senior idle extra employe a day's pay (8 hours) on each occasion each day that the violation takes place, commencing January 6, 1964 until the violation is corrected. In the event no extra employe is found available then the senior regularly assigned employe listed on the seniority roster, on rest, shall be so compensated.

4. A joint check shall be made of Carrier's records to determine the dates and occasions that the violations take place as well as the names of claimants.

EMPLOYES' STATEMENT OF FACTS: As related in the Statement of Claim, employes in Carrier's train service are handling train orders at Maybrook, New York. Attached hereto, as ORT Exhibit 1 is a map of The Lehigh and Hudson River Railway (hereinafter "L&H" or "Carrier") and connecting railroads. Maybrook is located in the circle on the map.

Historical background and factual data is related, next following. Prior to 1924, the positions at Maybrook were under an agreement between the Central New England Railway Company (hereinafter "C&E") and The Order of Railroad Telegraphers (hereinafter "ORT" or "Employes"). The wage scale

(Exhibit B) October 18, 1962 Superintendent P. W. Early denied this claim. General Chairman Adler on October 29, 1962, (Exhibit C), changed the claim from "call time rate" to "eight (8) hours pay." October 29, 1962 the General Chairman appealed from the Superintendent's decision to the highest officer of the Carrier to whom appeals can be taken. This officer rendered decision on November 26, 1962, (Exhibit E) with supplementary letter (Exhibit F) of November 30, 1962. The General Chairman rejected this denial on December 19, 1962 (Exhibit G) and stated that an appeal would be taken off the property.

No further action was taken on this claim until February 12, 1964 when General Chairman Adler again filed a like claim with the Superintendent (Exhibit H) alleging violation of the Agreement on January 6, 1964 when the Carrier permitted or required train service employes who are outside the coverage of the Agreement to handle (receive, copy and deliver) train orders at Maybrook, New York. Superintendent P. W. Early denied this claim (Exhibit I) on February 20, 1964. An appeal from Mr. Early's decision (Exhibit J) was made on March 30, 1964. At this time a new General Chairman took over and reference to the appeal was directed to him. By mutual agreement a conference on this appeal was postponed until May 25, 1964, to permit the Vice President of The Order of Railroad Telegraphers to attend. This appeal was denied by the highest officer on June 4, 1964, (Exhibit K).

Agreement between The Lehigh and Hudson River Railway Company and The Order of Railroad Telegraphers, effective August 1, 1947 is on file with this Board and by reference is made a part hereof.

(Exhibits not reproduced.)

OPINION OF BOARD: The New York, New Haven, and Hartford Railroad Company maintained three operators positions at 'BK" office at Maybrook, New York for many years. Under an arrangement between the participating Railroads, these operators performed some work for the connecting lines of the Erie Railroad, the Lehigh and New England Railroad, and the Lehigh and Hudson River Railway Company. Shortly after the termination of World War II the New Haven Railroad abolished the third trick operator's position at "BK". Shortly thereafter, the Lehigh and Hudson notified New Haven that they had no need for operators at "BK". Subsequently New Haven re-located their general office and "XC" office within the engine house at Maybrook and further arrangements were made whereby the "XC" office would take over the work of New Haven then remaining at "BK". Thereafter, and in August, 1959, New Haven abolished the second trick operator position at "BK". In November, 1959 New Haven abolished the first trick operator position. Since August 2, 1959 on the second trick and since November 28, 1959 on the first trick, the Lehigh and Hudson River Railway Company Conductors have received train orders for their return trip from the train dispatcher at Warwick, New York by telephone on Lehigh and Hudson River Railway Company property outside of Maybrook.

A claim similar to the instant claim was filed September 26, 1962. It was denied through the highest officer and notice was given by the General Chairman that the denial would be appealed off the property. No further action was taken on the 1962 claim and the denial became final. This claim was then filed with the Superintendent on February 12, 1964.

Carrier contends that this claim is barred from consideration because the Organization failed to comply with Article V, Section 1(c) of the National

Agreement of August 21, 1954 which requires an appeal to this Board within 9 months after declination by the highest designated officer on the property. In view of the many prior Awards touching upon this same issue, Carrier's contention is well taken. During the handling of the 1962 claim on this property, it was well established that employes outside the coverage of the Agreement were allowed to receive, copy and deliver train orders at Maybrook, New York. The 1962 claim was progressed through the highest designated officer on the property, who denied the claim. The appeal from his decision to this Board was never perfected and therefore, the denial of the 1962 claim became final. The 1962 claim was identical to the instant claim. This Board will follows Award 12851 (Coburn) which held that the substance of an original claim (which was not appealed) was the same as the claim filed in Award 12851 and that therefore Article V, Section 1(c) was controlling thereby barring the claim under consideration. Also see Awards 10532 (Mitchell), 15327 (House), 15658 (Zumas), 15688 (Dorsey), and 15757 (Harr).

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.

AWARD

Claim dismissed because of violation of time limit rule contained in Article V, Section 1(c) of August 21, 1954 Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November, 1968.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.