

Award No. 19102

Docket No. TE-15514

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul C. Dugan, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND
STEAMSHIP CLERKS, FREIGHT HANDLERS,
EXPRESS AND STATION EMPLOYES
(Formerly Transportation-Communication Employees Union)**

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Lehigh Valley Railroad, that:

1. Carrier violated the Agreement between the parties hereto when and because on November 27, December 6, 7, 13, 14, 18, 20, 24, 27, 1963, January 4, 7, 9, 11, 16, 17, 18, 21 and 23, 1964, it required or permitted a non-scope employe (engineer Walbert) to perform communication work of record at Delano, Pennsylvania, in reporting by telephone Extra 262, Extra 262, Extra 270, Extra 270, Extra 270, Extra 258, Extra 258, Extra 258, Extra 258, Extra 265, Extra 262, Extra 267, Extra 265, Extra 262, Extra 272, Extra 258, Extra 265 and Extra 262 by Laurel Junction (West) at 11:50 P. M., 5:25 A. M., 1:50 A. M., 1:35 A. M., 1:30 A. M., 1:50 A. M., 2:00 A. M., 12:30 A. M., 1:15 A. M., 5:20 A. M., 11:40 P. M., 2:43 A. M., 6:00 A. M., 4:50 A. M., 3:00 A. M., 2:30 A. M., 12:50 A. M. and 5:50 A. M., respectively.

2. Carrier, as a result of the violations set out above, shall compensate Mr. E. W. Fitzpatrick, agent-telegrapher, Delano, Pennsylvania, for one minimum call (two hours) at the rate of \$4.0542 per hour to cover each of the 18 violations involved in this case. Total amount of claim \$145.95.

EMPLOYES' STATEMENT OF FACTS: The correspondence exchanged between the parties in the handling of this dispute is reproduced and shown on the pages next following. Said record shows the claim, the basis therefor, the facts relative thereto, the arguments advanced by the parties in support of their respective position, and the area of disagreement.

Mr. R. A. Grover
Supervisor-Stations
Lehigh Valley Railroad Company
Union Station Plaza
Bethlehem, Pa.

January 25, 1964

ployes called for service will be paid. In this instance the agent-telegrapher at Delano did not stand to be called for the service made the basis of this claim, therefore, Rule No. 13 is not applicable.

You also cite three instances wherein a local supervisor has paid calls in the past to the agent at Delano. It has been firmly established that payments, practices or agreements made by those not authorized to interpret the terms and conditions of the schedule agreement may not set precedent as to the proper application of the rules of the agreement. This office is not bound by local practice, that is, if three instances over a long period of years can establish a local practice, when such local practice is in conflict with the rules.

Claimant in this case was not the telegrapher agreement employe to be called was it necessary to call one for the service complained of. The claimant would not have performed the work made the basis of this claim during his regular tour of duty, should the occasion have arisen. It is the regular assigned duty of the towerman-telephoner at Laurel Junction to report the time of a train's passing Laurel Junction. During discussion of this claim, you pointed out the fact that towerman-telephoner positions were assigned at Laurel Junction on three tricks and now that the third trick position has been discontinued, the practice complained of in this case is taking place on the third trick only, as the towerman on the first and second tricks report any trains during their tours of duty. Therefore, it stands to reason that if the claimant in this case does not perform the service when he is on duty, he does not stand to perform the service when he is not on duty. Should there be an aggrieved telegrapher employe, which fact we do not concede, he would be the telegrapher employe on the first or second trick Laurel Junction positions who regularly perform the work.

Therefore, as the claim in this case is without merit it is denied."

The General Chairman then notified the Chief of Personnel in letter dated December 30, 1964 his decision was not accepted and at the same time made various incorrect statements which the Chief of Personnel denied in letter of February 11, 1965 as follows:

"This has reference to General Chairman North's Letter dated December 30, 1964 concerning alleged violation of the Telegraphers' Agreement at Delano, Pa.

For the record, it should become clear to your organization that the Carrier is not in accord with the statements made and does not accept them as fact but as mere allegations on the part of the then General Chairman and, as such, they are denied."

There is an Agreement between the parties to this dispute governing the rules, rates of pay and working conditions of claimant dated February 1, 1948, on file with your Board, said agreement is made part of this submission.

OPINION OF BOARD: The Organization contends that Carrier violated the Telegraphers Agreement when it permitted Engineer Walbert, by use of the telephone at Delano, Pa. to transmit to the Coxton, Pa. train dispatcher and Hazleton "HS" telegrapher movement of various trains at various times on various dates past Laurel Junction.

This Board was confronted with a similar issue and similar rule involving the same parties to this dispute in Award No. 1525. In said Award the Board concluded:

"It appears that the Carrier has conceded that track cars will be governed by the same rules and instructions as trains. See Award 8146 and 8540. This being so, reports of track car movements are treated the same as reports of train movements. By a long line of Awards, including 8263, 8264, 11722 and 11848, reports on train movements have been held to be work exclusive to telegraphers. Further, Awards 4458 and 4516 held that use of a telephone in lieu of a telegraph was a communication of record and belonged exclusively to telegraphers. We, therefore, hold that reports of track car movements is also work exclusive to the telegraphers where there is a telegraph station in existence at the point where the telephone report is made. It being so held, it follows that the off-duty telegrapher at Laceyville and Wyalusing should be allowed a call for the work done which belonged exclusively to them * * *."

Finding said Award No. 12525 controlling in the determination of this dispute, we find that Carrier violated the Agreement in this instance.

In regard to damages, Carrier argues that Claimant was not the proper Claimant and did not stand to be called under any circumstance. With this contention, we do not agree. The violation occurred at Delano, Pa. where the Engineer in question made the telephone call to the train dispatcher. Claimant is the agent-telegrapher at Delano, Pa. and did stand to be called to perform the work in question.

Thus, for the aforesaid reasons, we will sustain the claim.

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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1972.

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