

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company, Pacific Lines, that Telegrapher J. M. Campbell, Oakland, Portland Division, be compensated for one call, March 5, 1942, under the rules of the Telegraphers' Agreement account conductor being used to copy train order at that station.

EMPLOYES' STATEMENT OF FACTS: Claimant J. M. Campbell was the regularly assigned Agent-telegrapher at Oakland, Oregon, on March 5, 1942.

He had complied with Rule 920 of the Rules and Regulations of the Transportation Department of the Southern Pacific Company, Pacific Lines, which provides—

"Office hours at train-order offices are fixed by the superintendent. Operators, at stations where offices are not open continuously, must post notice showing location of their place of residence, so they may be called in an emergency."

At 11:16 P. M., March 5, 1942, outside the regular assigned hours of Claimant Campbell, Conductor Huber of train Extra 3900 West, copied train order No. 525 at Oakland.

There is an agreement in effect between the parties to this dispute and copy of that agreement is on file with this Board.

POSITION OF EMPLOYES: This claim is prosecuted under Rule 29 of the Telegraphers' Agreement, which we quote for ready reference—

"RULE 29

Handling Train Orders

No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in emergency, in which case the telegrapher will be paid for the call."

EXHIBITS "A" to "I" inclusive are shown as a part of this brief.

EXHIBIT "A" is communication addressed to Claimant Campbell by Superintendent of the Portland Division, upon which Division Oakland, Oregon, is situated, seeking information as to whether the Claimant had

"No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located—except in an emergency, in which case the telegrapher will be paid for the call.

"The employes claim that during the period January 8, 1923, to November 23, 1923, the train and engine men were used on 45 different occasions to transmit and receive train orders by telephone.

"It is claimed that the carrier violated rules 5 and 16 of the agreement, and that Mr. Roach should be compensated for the 45 calls for which it is alleged he was available.

"The carrier contends that Mr. Roach resides three and one-half blocks from the station and was without telephone communication; that had the conductor delegated the brakeman to call this operator, or had he performed the service himself under the most favorable circumstances, it would have caused delay to his train; and further, that Mr. Roach was not 'available' under rule 16, and it was therefore justified in not calling him.

"The carrier also takes the position that Mr. Roach should have arranged for telephone service, and that his failure to do so proved that he was indifferent to his own welfare as well as to that of the carrier.

"DECISION.—Based upon the evidence submitted in this particular case, the claim of the employes is denied."

CONCLUSION

The carrier asserts that the foregoing conclusively establishes that the claim in this docket is entirely without merit and therefore respectfully submits that it should be denied.

OPINION OF BOARD: On March 5, 1942, claimant was telegrapher at Oakland, Oregon, with assigned week-day hours from 9:00 A. M. to 6:00 P. M. He resided between 4 and 4½ short blocks, or approximately 1260 feet from the station and had no telephone. His address was posted on the station office doors and in the conductors' way bill box. A freight train stopped at said station at 11:15 P. M. of said day for the purpose of setting out a car. The claimant was at home at the time, but instead of calling him the conductor directly telephoned the dispatcher and took down and copied the orders. It further appears that claimant's residence was near the railroad track; that the caboose stopped near said residence; and that conductors frequently called upon the claimant at his home during his off-hours to come to the station and take and copy orders. The claim is for one call (three hours at the pro rata rate).

The claim is predicated upon Rule 29 of the effective Agreement, which reads:

"No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in emergency, in which case the telegrapher will be paid for the call."

No emergency is claimed, and the disposition of the case must turn upon whether the telegrapher could have been promptly located. That the claimant could have been located cannot be doubted, since he was at home and had posted his address at the places customarily used for that purpose. This reduces the inquiry to whether the claimant's services could have been promptly obtained, taking into account the surrounding circumstances and

the purposes for which his services were needed. The facts bearing upon that issue are the distance between the claimant's home and the station and time within which it was necessary for the conductor to obtain his orders. In practical effect, the matter of the distance which the conductor was required to travel in going to and from the claimant's home was substantially reduced by the fact that he might have alighted from the caboose almost at the claimant's house. That it was not unreasonable to expect the conductor to walk 4 or 4½ blocks to call the telegrapher, under any circumstances, is revealed by the fact that other conductors did call for the claimant at his home during his off hours.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

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 carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1944.