

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Grady Lewis, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
BOSTON AND MAINE RAILROAD

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Boston and Maine Railroad that A. D. Howland, regularly assigned to the position of agent-operator at Westboro, N. H., hours 7:00 A.M. to 4:00 P.M., with one hour allowed for meal, who was required by the carrier to suspend work 7:00 A.M. to 3:00 P.M. during his regular hours on the twenty four days January 6 through January 29, 1946, and work the second trick assistant ticket agent-operator position at White River Junction, Vt., hours 3:00 P.M. to 11:00 P.M., with no allowance for meals, on each of these days, shall be paid for the number of hours he was thus required to suspend work during his regular hours at the pro rata rate and at the overtime rate for the number of hours he was required to work on the White River Junction position outside of the assigned hours of his assigned position at Westboro.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties bearing effective date of August 9, 1944, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

The telegraphers' agreement at page 33 lists at Westboro an agent-operator position, rate of pay including the wage increase of January 1, 1946, \$1.11 an hour. At White River Junction, page 34, there are listed three assistant ticket agent-operator positions, rate of pay including the wage increase of January 1, 1946, \$1.09½ an hour. January 6 through January 29, 1946, the assigned hours at Westboro were 7:00 A.M. to 4:00 P.M. with one hour out for meals, daily except Sunday. At White River Junction the service was continuous, i.e., 7:00 A.M. to 3:00 P.M., 3:00 P.M. to 11:00 P.M. and 11:00 P.M. to 7:00 A.M.

January 6, 1946, and continuing through January 29, 1946, Mr. A. D. Howland, the regular incumbent of the Westboro position, was instructed to suspend work from his regular assignment and proceed to work the 3:00 P.M. to 11:00 P.M. position at White River Junction, an assignment of which seven hours were outside of and not continuous with his regular position. Mr. Howland was paid for this "notified or called" service at the straight time rate of the Westboro agent-operator position. During Mr. Howland's occupancy of the White River Junction position his regular position at Westboro was protected by extra employe Clouthier.

Under the provisions of Articles VII and IX of the telegraphers' agreement Howland claimed eight hours at straight time rate of his regular position at Westboro and seven hours at time and one-half rate each day involved, because he had been suspended during his regular hours and required to work seven hours outside of said regular hours. The Carrier denied the claim.

in the old ones in that particular respect, there is no reason to suppose that a different interpretation should be placed on the present rules. It was only after the new rules became effective that somebody conceived the idea of "suspended time" and a flood of claims began to come in.

It is true that one case, the Carter case, was allowed, but the facts are not the same and the allowance of that claim should not be considered a precedent for all other claims of whatever nature.

In Award 2511, Docket TE-2512, Third Division, assisted by Referee Blake, denied a claim identical to this one. The attention of the Board is respectfully referred to that Award, in which there is an exhaustive review of the rules and a full and complete decision by the Board. There is no difference between the facts or the rules involved in that case and the facts and rules in this case. In accordance with the decision in that case this claim should be denied, because—

- 1—The claimant was the only man available to be used in the emergency.
- 2—The rule as cited for the claimant does not support the claim.
- 3—The awards of the Third Division in similar cases refute the claim.
- 4—The right of the Carrier to divert an employe has long been recognized.
- 5—There was no suspension of work, there was no overtime, and there was no loss of pay.

The claimant was paid exactly in accordance with the provisions of Article XV and is not entitled to any more.

OPINION OF BOARD: Carrier claims an emergency contemplated by Article 15 of the agreement. The existence of such emergency rests upon a determination of the fact of the availability of a qualified relief operator to fill in for the operator at White River Junction.

Testing the qualifications of extra employe Cloutier in light of the record it appears that he had been theretofore assigned for some time to a train order telegraph station at Ely, Vermont. The work at that point is comparable to the work at White River Junction. Moreover, the Carrier's leaving him in charge of the Westboro station, instead of blanking it during the absence of Howland is further evidence of his capacity to have been used to cover the position at White River Junction.

Having determined Cloutier's availability for the vacancy created by the emergency, the claim must be sustained.

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 Employees 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 Carrier violated the provisions of the agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of July, 1947.