

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY**

(Joseph B. Fleming and Aaron Colnon, Trustees)

STATEMENT OF FACTS: Claim of the General Committee of the Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railway Company, that Telegraphers W. C. Arganbright, Joliet Yard, and telegraphers relieving him during the period involved, be paid one call on each and every calendar day beginning March 30th, 1945 and thereafter until and including November 8th, 1946, that they were instructed and required to leave train orders and/or clearance cards on the train register, or in the bill box for train crews to secure and act upon after claimants had completed their tours of duty.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of January 1, 1928, was in effect between the parties to this dispute, copies of which are on file with your Board.

Prior to March, 1945, a continuous telegraph and train order office was operated at Rockdale, Illinois, approximately four miles west of Joliet Yard. On or about Sept. 15, 1943 all telegraph positions at Rockdale were abolished. One telegraph-train order position was established at Joliet Yard with assigned hours 7:30 A. M. to 4:30 P. M. daily, and a portion of the work formerly done at Rockdale assigned to this position.

Claimant Arganbright was regularly assigned to the Joliet Yard position on Telegraphers' Bulletin number 6 dated March 15, 1945, and was actually placed thereon March 30, 1945, the initial date of the claim. He worked daily until November 8, 1946 except for such days that he was relieved for vacation or Rest Days, or used elsewhere as an emergency telegrapher.

On each day worked at Joliet Yard, March 30, 1945 to and including Nov. 8, 1946, claimant was required to leave train orders and/or clearance cards on the train register to be secured and acted on by train crews of the so-called Joliet Merchandise, due out of Joliet Yard 7:30 P. M. Occasionally orders and clearances were also delivered in this manner to trainmen of the Blue Island Local, when it was foreseen this train would leave the yard after 4:30 P. M. when claimant went off duty.

The organization was unaware that this violative practice existed at Joliet Yard until October 30, 1946, when the Chief Dispatcher was then notified after which, on Nov. 9, 1946, the practice was discontinued.

ation is confined to the territory between Blue Island and Morris, Illinois and thereafter subject to ninety days' written notice from any party signatory hereto in which event such notice shall be accepted as cancelling the agreement in its entirety between the carrier and the two organizations, and between the two organizations signatory hereto unless during such ninety day period the parties agree upon its extension or revise it to meet conditions then existing.

ACCEPTED:

FOR THE EMPLOYEES:

(signed) J. F. Young
General Chairman
Order of Railroad
Telegraphers

(signed E. J. Dunn
General Chairman
American Train Dispatchers
Association."

FOR THE CARRIER:

(signed) G. E. Mallory
General Supervisor Wage
Schedules

During the period of this claim, the position on the second shift (3 P. M. to 11 P. M.) was the position coming under the provisions of the agreement with the American Train Dispatchers' Association.

Inasmuch as Article 1 (b) quoted above authorizes train dispatchers to handle train orders and a position covered by the train dispatchers' agreement was working at the time that the train orders in question were delivered to the train crews, claimant has no proper claim because no additional payment is due when employees mentioned in Article 1 (b) are on duty at the time train order is delivered.

We also urge that Article 6 (h) precludes claimant having any rightful claim before this Board in excess of thirty days prior to November 12, 1946. We do not know the date upon which Chief Dispatcher Thayer of this carrier received Mr. Arganbright's letter of November 12, 1946. Under the provisions of Article 6 (h) the claims of Mr. Arganbright were not "taken up with the proper officials" until Mr. Thayer received Mr. Arganbright's letter dated November 12, 1946. In any event, assuming the date to be correct, if it was mailed on November 12, 1946, it would have been extremely unlikely that Mr. Thayer would have received it prior to November 13, 1946.

Our contentions in this case are supported by numerous awards of this Board.

We respectfully petition the Board to deny the claim.

OPINION OF BOARD: On March 30, 1945, the Claimant W. C. Arganbright, was assigned to the position of a telegrapher at the Joliet Yard, Joliet, Illinois, and, except for vacations and rest days, worked on such position daily until November 8, 1946, the day when the alleged grievance, herein complained of, ceased. His regular hours were from 7:30 A. M. to 4:30 P. M., presumably with one hour for lunch, although the docket does not so state. On each day he worked his position he was required to leave train orders or clearance cards on the train register, to be picked up and acted on by train crews of a certain train called Joliet Merchandise, due out of Joliet Yard at 7:30 P. M., and, on occasions, by crews of other trains leaving said yard after 4:30 P. M. when Claimant's tour of duty ended. It is obvious that such train orders or clearance cards were, in their final stages, handled by employees not covered by the Telegraphers' Agreement; and on that basis, it is contended by Petitioner, that the Claimant should have been called to perform the act of delivering such orders or cards to the train crews, aforesaid; and that the admitted failure of the Carrier to do so, entitles the Claimant to be paid for such call, on each day he worked at the time and one-half rate of pay, under Articles 1 (b) and 4 (c) of the controlling Agreement, effective January 1, 1928.

Article 1 (b) 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, can be promptly located and is available, except in an emergency, in which case the telegrapher will be notified and paid for the call."

Article 4 (c) provides:

"Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the minute basis."

The question raised herein was first considered by this Division in Award No. 1166, on a case arising on the Atchison, Topeka and Santa Fe Railway, on rules similar to those quoted above, and where the practice here complained of was involved. It was held that the practice violated the Agreement. Award No. 1166 was followed by this Division in its Awards Nos. 1169, 1170 and 1422; but in its Award No. 1821, it failed to follow its previous awards on the question, and denied the claim there asserted. However, in a series of Awards, Nos. 2926 to 2930, both inclusive, it returned to its former position, and in claims arising on this Carrier, and on the rules quoted above, made affirmative awards. These later awards were subsequently affirmed by this Division in its Awards Nos. 3612 and 3670, although in the latter award the referee was somewhat less than enthusiastic in sustaining the claim there made.

In view of what appears to be the settled policy of this Division on the question, we are of the opinion that the claim should be sustained, subject to the limitation on the monetary award hereinafter fixed. In reaching this conclusion, we have not considered the offer of compromise made by the Carrier. Such offer was not accepted, and after its rejection was no longer binding on the Carrier. We have considered the Carrier's contention, that inasmuch as it had a telegrapher on duty in the same yard, after the Claimant finished his regular assignment, there was no occasion to call Claimant. The telegrapher on duty was located a mile distant from the point where the train orders and clearance cards were to be handled, and, we think, it would have been impractical to use him for that work.

The question remains as to what, if any, limitation should be placed on the monetary award. The claim was filed with the Carrier on November 12, 1946, and the practice complained of had been discontinued on November 9, 1946. The parties seem to be in agreement that Article 6 (h) applies in a proper case. That Rule reads:

"Other grievances will be taken up with the proper officials within thirty days; otherwise, redress in such cases will be waived."

The Carrier contends that this rule should be applied to this case, and that in no event should a monetary award be made for more than the thirty days next preceding the filing of the claim herein on November 12, 1946. Petitioner, while admitting the general application of Rule 6 (h), contends that it cannot be applied to this case because the grievance complained of was a continuing one, dating from the action of this Division in Awards Nos. 2926 to 2930, aforesaid, which were made on June 20, 1945. Its claim is that following said awards the practice there condemned should have been discontinued at Joliet Yard, and that the failure of the Carrier to do so, made the grievance a continuing one at that point, and cite awards to the effect that a continuing grievance is not covered by Rule 6 (h).

We do not think what the Carrier did at Joliet Yard, subsequent to June 20, 1945, constituted a continuing grievance of which the Claimant can take advantage. What is or is not a continuing grievance, depends on the facts and circumstances of the case where it is alleged to exist. Here the Carrier contends that there was, in fact, no violation of the Agreement in what it did at Joliet Yard. We have denied that contention; but in view of the fact that

when Carrier's attention was called to the situation, and it received notice that it would be contended that the Agreement was being violated, it promptly discontinued the practice complained of, we cannot impute to the Carrier bad faith. Petitioner says that it did not know of the practice until shortly before the claim was filed, and thus explains its failure to file its claim earlier. The practice did not appear to the Claimant to be his prejudice, else, we would assume, he would have complained about it, either to the Carrier, or to his Organization. It appears to be a case where the situation was permitted to drift along with no appreciation on the part of anyone that the Agreement was being violated. Such a case does not afford justification for permitting an accumulation of a monetary claim such as is presented in this case. There may not have been a positive duty on the part of the Petitioner to investigate the situation at Joliet Yard, following the June 20, 1945, awards; but, on the other hand, its failure to do so cannot be used to substantiate its present claim that what the Carrier did there constituted a continuing grievance, not covered by Rule 6 (h).

We are of the opinion that Rule 6 (h) of the Agreement should be applied to this case. This claim was filed with the Carrier on November 12, 1946, and the monetary award should date from October 13, 1946, and continue to and inclusive of November 8, 1946. The practice complained of was discontinued as of November 9, 1946, three days before the claim was filed. We therefore sustain the claim in principal, but limit the monetary award to pay for one call, at the time and one-half rate of pay, for each day Claimant worked and should have been called to handle train orders and clearance cards, after his tour of duty ended, from October 13, to November 8, 1946, both inclusive.

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 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 to the extent set out in the Opinion.

AWARD

Claim sustained, but money award limited to pay for one call on each day Claimant worked, from October 13, 1946, to November 8, 1946, both inclusive, as set out in Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 11th day of August, 1948.