

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY
BUFFALO AND EAST

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad, Buffalo and East, that:

(a) the Carrier violated and continues to violate the rules of the Telegraphers' Agreement when and because on each week day beginning with and since September 16, 1946, said Carrier permits or requires a section foreman, or a motor car operator, to copy a train order, or train orders, at Munson, Pennsylvania, outside of the assigned hours of the telegrapher, and

(b) in consequence thereof the Carrier shall now be required to pay "call" service (Rule 5 of the Telegraphers' Agreement) to the incumbent of the telegrapher position at Munson for each train order so copied.

EMPLOYEES' STATEMENT OF FACTS: An agreement by and between the parties, herein referred to as the Telegraphers' Agreement, bearing effective date of January 1, 1940, is in evidence; copies thereof are on file with the National Railroad Adjustment Board.

Munson, Pennsylvania, is a one-man station employing one telegrapher 12 Noon to 9:00 P. M. (one hour out for meal) daily, except Sundays.

Each week day beginning with and subsequent to September 16, 1946, the Carrier requires or permits a section foreman, or a motor car operator, to copy a train order, or train orders, at Munson, outside of the telegrapher's assigned hours. For example:

Date	Train Order No.	Time	Addressee	Copied By	Title
Sept. 16, 1946	215	6:28 AM	TMC 4467	Anderson	Section Foreman
" 17, "	216	6:11 AM	TMC 4467	"	" "
" 18, "	214	6:11 AM	TMC 4467	"	" "
" 18, "	246	8:43 AM	TMC 4585	Lusak	Mtr. Car Opr.
" 19, "	214	6:47 AM	TMC 4467	Davis	" " "
" 20, "	215	6:08 AM	TMC 4467	Anderson	Section Foreman
" 23, "	239	8:22 AM	TMC 4585	Lusak	Mtr. Car Opr.
" 25, "	253	8:46 AM	TMC 4585	"	" " "
" 26, "	220	6:11 AM	TMC 4467	Anderson	Section Foreman
" 27, "	232	7:40 AM	TMC 3234	Ludwig	" "

5. AWARDS OF THE THIRD DIVISION, N.R.A.B., SUPPORT THE CARRIER'S CONTENTION THAT NO RECOGNITION SHOULD BE GIVEN TO PRE-DATED CLAIMS.

As indicated above, the claim of the Employee covers the period beginning September 16, 1946, and was not submitted to the Superintendent until June 25, 1947.

The Carrier holds that claims accruing prior to the date they are first presented have no standing and should be denied.

The following awards of your Board support the contention of the Carrier in respect to pre-dated claims:

Award 463. Claim of gateman employed at St. Paul Union Depot for compensation for all time worked in excess of eight consecutive hours exclusive of the meal period from time of first reporting for duty until final release, **retroactive to April 13, 1933.**

In its opinion, the Board brought out the fact that "this dispute was handled on the property only for the period subsequent to February 1, 1936," and sustained the claims effective from that date.

Award 500. Claim of certain employees in the Mail and Baggage Department of St. Paul Union Depot for a minimum of eight hours' pay each day short shifts were worked, **retroactive to June 12, 1934.**

In its findings, the Board decided, "That the claim of the employees * * * shall be sustained but limited in its retroactive application * * * to February 1, 1936."

Award 540. Claim of a signal maintainer on the Toledo Division of the New York Central Railroad for payment at time and one-half rate for all service performed on Sundays from February 1, 1932 to January 16, 1933 and subsequent to July 1, 1934; also similar claim from another signal maintainer for the period May 20, 1934 to April 30, 1936.

The opinion of the Board reads in part, "In the opinion of the Board the pro rata payment * * * since September 3, 1935 the date when claims were presented in their behalf is in violation of the provisions of Rule 16." (Emphasis added.)

Many other awards could be cited in which your Board has followed the practice of recognizing claims only from the date first presented to the Carrier.

CONCLUSION

The Carrier has conclusively established that the practice complained of has been recognized as being in accord with the unsigned memorandum and not in violation of any rules of the current agreement.

(Exhibits not reproduced.)

OPINION OF BOARD: From September 16, 1946 through October 22, 1947, Carrier required or permitted a section foreman or a motor car operator to copy train orders at Munson, outside of the telegraphers' assigned hours on the days specified in the claim. For the reasons stated in Award 4281, the claim is sustained as to all violations occurring on or after September 16, 1946, the date the violation was first called to the Carrier's attention.

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.

AWARD

Claim (a) sustained.

Claim (b) sustained from and after September 16, 1946.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary.

Dated at Chicago, Illinois, this 21st day of January, 1949.