

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

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 the rules of the Telegraphers' Agreement when and because it required or permitted section foremen, or operators of motor cars, to copy train orders at New Paltz, New York, outside the assigned hours of the agent-telegrapher, and

(b) in consequence thereof the Carrier shall be required to pay "call" service (Rule 5 of the Telegraphers' Agreement) to the incumbent of the agent-telegrapher position at New Paltz on each of the days that train orders were copied by outside employes at New Paltz commencing May 20, 1946, examples of which are set forth in the statement of facts.

EMPLOYES' 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.

New Paltz is a one-man station, employing an agent-telegrapher, 7:30 A. M. to 4:30 P. M. (one hour out to lunch) daily, except Sundays.

The Carrier required or permitted section foremen or operators of motor cars to copy train orders at New Paltz each week day beginning with the date of this claim, May 20, 1946. For example:

DATE	TRAIN ORDER NO.	TIME	ADDRESSEE	COPIED BY	TITLE
May 20, 1946	105	6:18 A. M.	Trk. Mtr. Car 4380	La Lima	Section Foreman
May 29, 1946	109	6:21 A. M.	"	"	"
June 5, 1946	106	6:03 A. M.	"	"	"
July 6, 1946	107	6:39 A. M.	"	"	"
July 29, 1946	103	6:12 A. M.	"	"	"
August 1, 1946	104	6:10 A. M.	"	"	"
August 5, 1946	103	6:02 A. M.	"	"	"
August 14, 1946	107	6:38 A. M.	"	"	"
August 24, 1946	106	6:08 A. M.	"	"	"
Sept. 6, 1946	104	5:59 A. M.	"	"	"
Oct. 2, 1946	105	6:46 A. M.	"	"	"

Award 500. Claim of certain employes 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 employes * * * 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 evidence herein presented conclusively proves that the claim of Employees prior to October 21, 1947, the date it was first brought to the attention of the Carrier, has no proper standing and should be denied. It further shows that Carrier acted promptly—within 7 days—after complaint was presented and such action eliminated the cause. At the same time, the Carrier has shown that the practice complained of has been recognized as being in accord with the unsigned memoranda and not in violation of any rules of the current agreement.

Exhibits not reproduced.

OPINION OF BOARD: From May 20, 1946 to October 27, 1947, Carrier required or permitted a section foreman at New Paltz, New York, to copy train orders outside of the assigned hours of the agent-telegrapher on the days specified in the claim. For the reasons stated in Award 4281, the claim should be sustained as to all violations occurring between October 21, 1947, the date the violation was called to the attention of the Carrier, and October 27, 1947, when the cause of complaint was eliminated.

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 claim will be sustained for violations occurring between October 21 and October 27, 1947.

AWARD

Claim (a) sustained. Claim (b) sustained from and after October 21, 1947.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of April, 1949.