

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 employees who are not covered by the Telegraphers' Agreement on the following dates: November 10, 1947, January 16, February 23, 24, 26, March 8, 20 and 22, 1948, to "OS" (report trains), trains of which a record is made on the train dispatcher's sheet, and to fulfill the duties of a block operator as well as to handle transportation communication service orders of record, by use of the telephone at Phoenix, New York, at times that the agent-telegrapher was available, but not on duty, and

(b) In consequence thereof, the Carrier shall now be required to pay "call" and overtime service (Rules 4 and 5 of the Telegraphers' Agreement) to the incumbent of the agent-telegrapher position at Phoenix, New York, on each of these occasions and subsequent occasions that he was not used.

EMPLOYES' STATEMENT OF FACTS: An agreement by and between the parties hereinafter 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.

Phoenix, New York, is a one-man station employing an agent-telegrapher under the Telegraphers' Agreement. His assigned hours are 6:45 A. M. to 3:45 P. M. He usually works one hour overtime. A caretaker is employed at the station to be on duty each night to protect the station and handle the mail and express on Train No. 33 due at 7:09 A. M. and Train No. 336 due at 10:00 P. M. This caretaker is also drayman for the delivery of the express for the Railway Express Agency.

On the dates shown in the Statement of Claim, the Carrier required or permitted train service employees or this caretaker, who are employees not covered by the Telegraphers' Agreement, to handle and perform work coming under the Scope Rule and Train Order Rule of the said agreement, such as "OS" of trains, handling of train orders, communication service orders of record and block trains, outside the regularly assigned hours of the agent-telegrapher.

Rule 5 is the "call" rule and reads as follows:

"Employees notified or called to perform work not continuous with the regular work period will be allowed a minimum of two hours at time and one-half 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 thereafter on the minute basis."

This rule, also by its very language, applies to employees who are notified or called to perform work, etc. Claimant employee was not notified to perform work nor called to perform work, and in fact performed no work outside of his regular working hours. Obviously, Rule 5 has no application in this case.

CONCLUSION

The Carrier has shown that claims in behalf of the agent-telegrapher at Phoenix on the dates listed in the Employees' Statement of Claim have no merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Between November 10, 1947, and March 22, 1948, the Carrier maintained a station at Phoenix, New York, employing an agent-telegrapher whose assigned hours were 6:45 A. M. to 3:45 P. M. daily except Sunday.

On eight dates specified in claim it is alleged Carrier permitted train service employees or others to perform the duties of block operator outside of the assigned hours of agent-telegrapher.

Claim for a Call under Rule 5 of Agreement effective January 1, 1940, should be sustained for November 10, 1947, February 26, and March 8, 1948.

On account of conflict in statements concerning incidents on January 16, February 23 and 24, and March 20 and 22, 1948, and lack of facts on so-called "subsequent occasions", the Board finds it impossible to render a decision.

Therefore claimant should be paid a "Call" for November 10, 1947, February 26, and March 8, 1948. Otherwise the claim should be remanded to the parties for development of facts and disposition on the property.

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 claim will be sustained for three "Calls" and otherwise remanded.

AWARD

Claim disposed of in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of April, 1949.