

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA & WESTERN
RAILROAD CO.**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware, Lackawanna and Western Railroad that: a) The Carrier violated the provisions of the Telegraphers' Agreement when and because on April 20, 1947, it permitted or required an employe at Utica Yard, not under the said Telegraphers' Agreement, to transmit a telegram from Utica Yard to Norwich at a time the first trick clerk-operator at Utica Yard was off duty;

b) In consequence of said violation the first trick clerk-operator at Utica Yard, W. A. Kling, shall be allowed to "call" under the provisions of Section 2 of the Rest Day Rules; and

c) Since the "call" allowable under Item (b) above constituted a second "call" on this date, W. A. Kling shall now be allowed eight (8) hours at time and one-half rate for services performed and entitled to on April 20, 1947, less three (3) hours at time and one-half rate which was currently allowed.

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

The Rest Day Rules bear an effective date of March 1, 1945, and are found in the November 1, 1947, revised Telegraphers' Agreement as Article 8; copies of this Agreement are also on file with the National Railroad Adjustment Board.

Regular communication service (telegraph and telephone—synonymous terms) is maintained sixteen hours each week-day at Utica Yard. The first trick clerk-operator is assigned 6:00 A.M. to 2:00 P.M. The Second trick clerk-operator is assigned 3:00 P.M. to 11:00 P.M. The communication office is closed from 11:00 P.M. to 6:00 A.M. and from 2:00 P.M. to 3:00 P.M.

The communication service assignments on Sundays are on a "call" basis; the first trick 6:00 A.M. to 8:00 A.M., and the second trick 3:00 P.M. to 5:00 P.M.

Sunday, April 20, 1947, at 10:00 A.M., an employe not covered by the Telegraphers' Agreement, at Utica Yard (Yardmaster Hutson), was required or permitted to transmit a telegram (hereinafter reproduced) from Utica Yard

Rule 5—Call Rule—Agreement of May 1, 1940 reads:

"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."

That rule only applies to employees notified or called to perform work not continuous with the regular work period. Kling was neither notified nor called to perform work.

Section 2 of the Agreement of November 20, 1946, refers only to employees holding positions required to work and the manner in which employees will be paid for time worked before or after the regular week day assignment. There is no provision made for payment to any one unless they actually work on Sunday. The only work Kling did on Sunday, April 20, 1947, was that to which he was assigned and this work was paid for in accordance with the Agreement of November 20, 1947.

The Employees are asking your Board to pay a claim on the theory that Kling worked.

There can be no mistake as to the meaning of the rule. Section 2—(Six (6) day positions) in part reads:

Paragraph 1—"Except as provided in Section 1, time worked on Sunday——"

Paragraph 2—"An employe occupying a position required to work on Sundays——"

Paragraph 3—"When a position is regularly required to work three hours or less on Sunday——"

Paragraph 4—"When a position is regularly required to work on more than three hours on Sunday——"

Paragraph 5—"Time worked before or after the hours of the regular week day assignment shall be paid in accordance with the overtime and call rules."

(3) Since Operator Kling did not work as provided in Section 2 of the Agreement of November 20, 1946, rules cited by the employees have no application here.

The claim is without merit and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: At its Utica Yard, Carrier maintained sixteen-hour-week day communication service, with first trick operator assigned 6 A.M. to 2 P.M., and second operator 3 P.M. to 11 P.M. On Sundays the service was reduced to four hours; viz. 6 A.M. to 8 A.M., and 3 P.M. to 5 P.M.

It is here claimed that Carrier violated the provisions of the Telegraphers' Agreement when on Sunday at 10 A.M. it permitted the Yardmaster, an employe not covered by the Telegraphers' Agreement, to send a telegram to a trainman at Norwich, reading as follows:

"Utica, N.Y. 4-20-47

"McMaster No. 1815, Norwich

"You are displaced by George Petty.

"G. B. A.
10:00 A.M."

Carrier denies that such telegram was sent or authorized, and asserts that, instead, the Yardmaster at Utica instructed the Dispatcher to call Norwich on the telephone and ask the operator to notify Trainman McMaster that he would be displaced by Petty at Utica. Assuming the facts to be as contended by the Organization, there is no contention made that the message had any connection whatever with the operation of the railroad or the business of the Carrier or that it belonged in the records of the Company. On the other hand, Carrier states that the message, however sent, was simply a matter of courtesy extended by one employe to another to advise him for his personal information and convenience that he was going to be displaced by a senior employe when his train reached Utica. The Organization offers no explanation of the purpose of the message, so Carrier's statement must be accepted as fact.

Whatever may be our interpretation of the scope rule and its traditional inclusion of "messages, orders or reports of record," we cannot stretch its language so as to obligate the Carrier thereunder to payment for a call predicated on the sending of such personal messages by one employe for the convenience and information of another.

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 employes 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 the Agreement was not violated.

AWARD

Claims (a), (b) and (c) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of February, 1950.