

Award No. 4819

Docket No. TE-4884

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers that J. R. Hogan, regularly assigned Telegrapher at Seaside, Oregon, working daily, hours 10:00 A.M. to 6:00 P.M., including a meal hour, shall be paid for a call of Two (2) hours at punitive rate, under the provisions of Rule 5 (b) of the telegraphers' agreement on January 15, 17, 20, 22, 24, 27, 29, 31, February 3, 5, 7, 10, 12, 14, 17, 19, 21, 24, 26, 28, March 2, 4, 6, 9, 11, 13, 16, 18, 20, 23, 25, 27, 30, April 1, 3, 6, 8, 10, 1948 because on previous dates train orders and clearances were copied by a telegrapher at Astoria, Oregon and delivered to trains at Astoria authorizing operation of trains Astoria to Seaside as well as trains Seaside to Astoria on following day, all at a time when Telegrapher Hogan was assigned but not on duty.

JOINT STATEMENT OF FACTS: An agreement bearing date of March 1, 1946 as to rates of pay and rules of working conditions is in effect between the parties to this dispute.

Seaside, Oregon is located 18.3 miles west of Astoria, Oregon and 118 miles west of Portland, Oregon by timetable direction. Seaside is the Passenger Train terminal on the Portland Division.

There is one Telegrapher located at Astoria with a weekday assignment of hours 8:00 A.M. to 5:00 P.M. exclusive of meal period. There is an Agent-telegrapher and a second trick Telegrapher located at Seaside. The assigned hours of the Agent-telegrapher at Seaside during the period covered by this claim were 6:00 A.M. to 2:00 P.M. daily except Sunday, with the exception of change in hours on March 23, 1948 8:00 A.M. to 4:00 P.M. The assigned hours of the second trick telegrapher at Seaside during the period covered by this claim were 10:00 A.M. to 6:00 P.M. seven days a week.

Order Number 243 was issued to Telegrapher at Astoria, Oregon on January 14, 1948 and read as follows:

"C&E Westward Trains

C&E Engine 150

C&E Engine 150 at Seaside c/o C&E Work Extra 150 at Astoria.
(body of order)

"Engine 150 works extra eleven ten 11:10 A. M. until eight ten 8:10 P. M. between Astoria and Seaside and between Warrenton and Fort Stevens not protecting against extra trains.

"On January 15 Engine 150 works extra four thirty 4:30 A. M. until eleven thirty 11:30 A. M. between Seaside and Astoria and

OPINION OF BOARD: This case involves the issuance of train orders for a work train at Astoria, Oregon. The orders covered the movement of the train over the main line from Astoria to Seaside, a distance of 18.3 miles, where the crew was tied-up for eight hours or more, and also the return movement from Seaside to Astoria. On days specified in the claim the orders and clearances were copied by the telegraphers at Astoria and delivered directly to the crew for execution. At said times there was a regularly assigned telegrapher at Seaside, who though not on duty, was, nevertheless, subject to call. The basis of the claim is the fact that the orders delivered at Astoria covered the return movement from Seaside.

The effective Agreement contains the following Call Rule, 23 (a):

"Only employes covered by this agreement, and Train Dispatchers, shall be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly notified, except in an emergency, in which case the Operator shall be notified and paid a call."

We could not sustain this claim without holding, in effect, that when the members of the crew received their orders at Astoria, they not only acted in their normal capacity as such, but also as agents for the delivery of their return orders to themselves at Seaside. This, it seems to us, assumes a most involved and somewhat anomalous situation and relationship.

The Organization relies heavily upon Award No. 1167. That docket disclosed facts somewhat similar to those in the instant case but, significantly, the return orders there involved were separate and distinct from the orders covering the initial movement and were addressed to the crew at the distant point where the lay-over occurred. The conclusion reached in Award No. 1167 appears to have been predicated solely upon the form of the orders for the return movement.

Giving Award No. 1167 the full consideration to which it is entitled as a precedent of this Board, we cannot regard it as highly persuasive, much less controlling, in this case. To ignore the distinguishing facts and follow that award in the instant case would result in a dangerous precedent for the gradual and piece-meal substitution of a code of Board-made rules for the clearly expressed provisions of the negotiated agreement of the parties.

It is enough to add that the conduct of the Carrier in the case before us appears to be substantially within the clear and unambiguous terms of Rule 23 (a). The need, if any exists, for the revision of the rule in matter of substance is a problem for negotiation, rather than for this Agency.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived hearing thereon;

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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 29th day of March, 1950.