Award No. 4886
Docket No. TE-4776

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD
(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:

(1) The Carrier fails and refuses to comply with the first sentence of Article 34 (a) of the Agreement at certain stations, basing such failure and refusal upon an improper interpretation of the language of the Article, specifically that portion "where it is practicable for the company to arrange for other to do the work" and,

(2) That the Carrier shall now be required to comply with that portion of Article 34 (a) by relieving employes of the work covered by Article 34 (a) at all locations where others can be secured to perform this service.

(3) That the discipline assessed C. E. Odell for failure to perform work referred to in article 34 (a) shall be removed and he shall be compensated for time lost and expenses incurred account attending hearing on demand of the Carrier.

EMPLOYES' STATEMENT OF FACTS: An Agreement by and between the parties, bearing effective date of July 1, 1948 is in evidence, hereinafter referred to as the Telegraphers' Agreement, copies thereof are on file with the National Railroad Adjustment Board. The Article upon which this dispute is based was placed in the Agreement as a result of arbitration proceedings. Nothing of this nature relating to the cleaning of stations has heretofore been contained in any Agreement between the parties.

Since the inclusion of this proviso referred to in the Statement of Claim within the Agreement, as a result of such inclusion, the Carrier has as yet failed to relieve employes of the duties specified in such proviso.

POSITION OF EMPLOYES: On June 24, 1948, the Board of Arbitration under the Railway Labor Act made its Award in the National Mediation Board Case A-2625-Arb. 106 which concerned the parties to this dispute. The full Agreement became effective July 1, 1948.

The Board of Arbitration in giving its decisions stated:

"This award is made pursuant to an arbitration agreement executed by the parties on March 19, 1948, in accordance with the provisions of the Railway Labor Act. The Carrier and the Organization named W. G. Abriel and N. D. Pritchett as their respective party

This rule has been in effect since July 1, 1948 and the stations are becoming unsightly and in a most unsanitary condition due to no proper janitor service being furnished by the Carrier in many stations. We find that in several instances, you are questioning the agent about the condition of the stations, but are not authorizing or arranging for cleaning as ordered by the Arbitration Board under Article 34.

We would appreciate hearing from you.

Yours very truly,

/s/ R. J. WOODMAN."

Similar letters were addressed to other Division Superintendents on the Line East territory.

It will be noted from the above quoted letter that Mr. Woodman contended that the cleaning work should be performed by "traveling or stationary janitors or some part-time or full-time help in each community where the station is situated." He obviously ignored entirely that portion of awarded Article 34(a), which limits the application to points "where it is practicable for the Company to arrange for others to do the work."

Inasmuch as the Board of Arbitration had adopted the New Haven rule for the purpose of its award, the Carrier inquired of Mr. Perry, Assistant Vice President in charge of Personnel on the New York, New Haven and Hartford Railroad, as to the meaning and application of the above quoted language of the New Haven rule. Photostat copies of Mr. Perry's letter of December 29, 1948 are submitted herewith as Carrier's Exhibit 1.

It will be observed that in explaining the New Haven rule Mr. Perry stated very definitely that the reference to "others to do this work" means "if there are other employes available to do the work" and that during all of the years that the rule has been in effect on the New Haven road (since 1913) the word "practicable" was not understood or applied in such manner as to require the hiring of part-time workers from outside sources.

The rule should not have any different meaning or application on our Line East property than it has had for 36 years or more on the New Haven road, where it was born.

From the foregoing it is evident that General Chairman Woodman has wrongly interpreted Article 34 and incorrectly instructed the Telegraphers as to its meaning. Items 1 and 2 of the Employes' claim should therefore be denied in their entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimant was the agent at Golden Bridge Station on March 7, 1949, on which date he was suspended from service. He was notified to report for a hearing on March 10, 1949 in connection with the violation of Rule J-1, special rule relating to the duties of Station Agents reading as follows: Employes must keep the premises in a neat and orderly condition." Claimant was given a five day deferred suspension, time lost pending investigation to apply thereon, and returned to service on March 11, 1949 after he indicated a willingness to comply with the rules.

The record shows that claimant had been instructed by his superior officers to clean the station, particularly the windows. He refused to carry out his instructions contending that he was not required to do this work by virtue of Article 34 (a), Telegraphers' Agreement, which provides:

"(a) Employes located in stations will not be required to scrub floors, clean windows, woodwork or toilets, where it is practicable for the company to arrange for others to do this work. At such stations, sectionmen will be assigned to remove snow from the station platforms and grounds, wherever possible."

It is the contention of the Organization that it has shown by evidence that it is practicable for others to do this cleaning work. There is evidence that at some points outside help could be employed, that section loborers were stationed at other points and that traveling janitors could be employed and used. We do not think the foregoing evidence is sufficient to establish a violation of the cited rule. The words "where it is practicable for the company to arrange for others to do this work", does not mean that the Carrier is obliged to employ additional help or farm out this work. It simply means that where circumstances will permit and there are employes available who could properly be assigned the work, the Carrier is obligated to relieve telegraphers of its performance. If the rule required, as the Organization contends, that Carrier must hire new employes to perform the work or farm it out to others and possibly violate the rules of some other craft in so doing, it would constitute a positive rule relieving telegraphers wholly from this type of work. No such result is intended by the rule as written. If there are employes of a class which could properly perform the work in connection with their assignment, or even at a small expense in overtime work, it would be practicable to have them perform it. Each station under this rule is necessarily controlled by the circumstances and facts existing at its location. It is not a rule that can be given a general interpretation as to its application to all stations on the railroad. Each one must be considered in view of the situation existing at the location of the dispute. Claims (1) and (2) cannot be sustained under the evidence in the record. They could not be sustained in any event for the reason that they are too general and involve a rule that must necessarily apply to the facts and circumstances surrounding each particular station.

As to part (3) of the claim, the Organization contends that the Carrier was in error in imposing discipline on Agent C. E. Odell for his refusal to perform the work referred to in Article 34 (a). The record shows that Odell was directed three times by letter to perform this work before he was taken out of service. He admits that he deliberately refused to perform a part of this work. His defense was that under the terms of Rule 34 (a) he was not obligated to perform it. This is not a defense. We say again that any employe must carry out the directions of his superior officers. If he is required to violate the agreement made with his craft, he may seek redress under the agreement itself. To permit each employe to place his own interpretation upon the provisions of the agreement before deciding whether he will obey the orders of superior officers, would create a situation under which no business organization could operate. An employe must follow the instructions of his superiors and if a grievance results, his remedy is to process a claim under the terms of the Agreement. Awards 3260, 2946.

In the case before us, Agent Odell admits he refused to follow the instructions given him. The discipline assessed was entirely proper and after it had served its purpose by coercing Odell into agreeing to follow instructions and do the work, the Carrier restored Odell to service.

We find no basis for complaint and such handling of the matter. The claim that the hearing was not held in accordance with the agreement has no merit.

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 oral 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 Agreement was not violated.

AWARD

Claims (1), (2) and (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois this 26th day of June, 1950.