

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Division Committee of the Brotherhood that:

(a) The Carrier violated the provisions of the Rules Agreement, effective May 1, 1942, particularly Rule 4-A-3, on February 10, 1948, St. Julian Freight Station and other locations, Norfolk, Virginia, by not compensating certain employes for a day's pay for that date.

(b) R. L. Doremus, S. H. Goffigon, C. E. Arnold, and N. M. Hudson, Clerks, each be paid a day's pay at the rate of position held.

(Docket E-525)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimants in this case hold positions and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimants in this case are employes with seniority standing on the Delmarva Division of the Carrier in Group 1 of the seniority roster for that class, and are incumbents of regular clerical positions at various offices at Norfolk, Va.

The facts in this case are simple and are not in dispute. Commencing on the evening of February 9, 1948, the Carrier's property, including the St. Julian Freight Station at Norfolk, Va., and the Yard Offices at Little Creek, a suburb of Norfolk, Va., (the station and offices involved in this dispute) became snowbound due to high drifts of snow. These locations were inaccessible to the employes on February 10, 1948. The employes could not report for work; no work was performed on that date; and the normal operations of

The Railway Labor Act, in Section 3 (i) confers upon the National Railway Adjustment Board, the power to hear and determine disputes growing out of "Grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions". The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with Agreements between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment, and obligations with reference thereto, not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that under the applicable Agreement it did not either reduce the work week of the Claimants or blank the positions of the Claimants, and they are not entitled to the compensation which they claim.

It is, therefore, respectfully submitted that the claim is supported by the applicable Agreement and should be denied.

(Exhibits Not Reproduced.)

OPINION OF BOARD: The facts in this claim as to a severe snow storm occurring at Norfolk, Virginia, on the night of February 9 and day of February 10, 1948, which made travel almost impossible and the Freight Station, Norfolk Yard and the Boatsman's Office inaccessible, are admitted. The claim itself is for a day's pay for four clerks who claim they were told not to report for work, or could not report for work, due to the snow storm. The Carrier denies that any one of the four clerks were told not to report for work by any superior officer of the Carrier, but on the other hand states that these claimants did not report for work or make themselves available for work and should not receive a day's pay.

The Employees state that Claimant Doremus called R. I. Wiggins, Chief Clerk, by telephone, between 8:00 and 9:00 a.m., at his home; that he was advised by Wiggins "no one was at the office but a watchman, that since all Transportation in Norfolk, Va. was at a standstill, the St. Julian Avenue Freight Station would not be open for business and there would be no use in my reporting for work." This statement is shown by the Employees in affidavit form (Employees' Exhibit "B"). Further, the affidavit shows that "I made several attempts to contact the St. Julian Avenue Freight Station of The Pennsylvania Railroad Co. by telephone, each time getting a busy signal (Dial Phone)."

The Carrier states that Wiggins did not instruct any employee who telephoned him not to report for work on February 10, 1949 (Carrier's affidavit exhibit).

The Employees offer an affidavit of Joseph Phillips (Employees' Exhibit "B") stating "I also received instructions from Mr. B. G. Vincent, Agent, and Mr. R. I. Wiggins, Chief Clerk, to advise all employees who either called in by telephone, or who reported in person to return to their homes as the station would be closed and no work performed. A considerable number of employees called in by telephone and I did advise them to stay at home and not report for work 'as per my instructions, who the employees were I do not know." Affidavits of J. W. Sanderlin and Paul Allen are also introduced to show that they overheard Phillips telling employees not to report for work. The Carrier by affidavit of Wiggins and Vincent deny that Phillips was told to instruct employees not to report for work.

Before deciding whether or not the Carrier violated any rules of the Agreement, we must decide whether or not these four employees made themselves available for work, for if they did not make themselves available they are not entitled to an affirmative award (Award 4750). Claimant Doremus did call Wiggins, the Chief Clerk. He states that Wiggins told him "there would be no use in my reporting for work." Doremus did not reach the station

because the telephone indicated a busy signal, so Phillips could not have told him not to report for work. So far as this Claimant is concerned, we can disregard the affidavit of Phillips, J. W. Sanderlin and Paul Allen. However, Wiggins says he "did not instruct any employe who telephoned me not to report for work on February 10, 1948." As Doremus' only contact, by his own admission, was Wiggins, it is his word against the word of Wiggins. The only reason Doremus would call Wiggins at his home would be to inquire about work that day, so it can be said that Doremus did report for work by 'phone and was told that there would be no use in reporting to work by Wiggins. Under Rule 4-A-3 the work week cannot be reduced below six days, unless agreed to by Management and the General Chairman, and the other exceptions contained therein which have no bearing on this claim. Therefore, the claim of Doremus should be allowed.

As to the claim of S. H. Goffigon, a seven-day employe, one necessary to the continuous operation of the Carrier as designated in Rule 4-A-2 (a), under another Carrier's interpretation of Award 3661 in Award 4750, this claim should be paid whether he made himself available for work or not.

As to the claim of C. E. Arnold, there is nothing in the record to show that he made himself available for work. The only statement in the record is that he called Chief Clerk Hudson. This claim should be denied.

As to the claim of N. M. Hudson, the record shows that he did call Boat Master Williams at his home about 6:30 a.m. and did talk to him several times during the day. Williams states that Hudson at no time was advised not to report for work. There is nothing in the Employes' submissions stating as to what conversations were held between Hudson and Williams that day, other than the conversation at 6:30 a.m. when Hudson told Williams he could not get to Little Creek on time. Carrier's submission shows a letter from J. A. Schwab, General Superintendent, to S. V. W. Loehr, stating that Hudson at 6:30 a.m. told Williams that it would be impossible for him to get to Little Creek on time.

If Hudson is a seven-day employe under Rule 4-A-2 (a) under the Agreement, he should be paid for the same reasons advanced in the Goffigon claim. If he is not a seven-day employe, then he should not be paid, for the reason that he called Boat Master Williams and said he could not get to Little Creek. This part of the claim is remanded back to the parties to ascertain the status of this claimant.

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 violated to the extent shown in the Opinion.

AWARD

Claim sustained for Claimants Doremus and Goffigon. Claim denied as to Claimant Arnold. Remanded as to Claimant Hudson.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 5th day of July, 1950.

DISSENT TO AWARD 4901, DOCKET CL-4850

The basic error of this award was its thrust upon the Carrier of the employe's obligation to make himself available for duty through an assumption not supported by facts of record that certain of the claimants were told by authorized representatives of the management either not to report for work or that there would be no use to report for work.

The error of the award was accentuated in the case of one claimant, S. H. Goffigon, by the assumption that another Carrier's representatives involved in two preceding awards, Nos. 3661 and 4750, by their efforts, shown in the record of Award 4750, to comply with the reasoning of the prior Award 3661, thus created an interpretation of their agreement which formed a proper base for application in this dispute between other parties under other circumstances covered by other understanding and agreements.

/s/ C. C. Cook
/s/ C. P. Dugan
/s/ J. S. Kemp
/s/ R. H. Allison
/s/ A. H. Jones