

Award No. 5696
Docket No. TE-5807

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Livingston Smith, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE NEW YORK, CHICAGO AND ST. LOUIS
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The New York, Chicago and St. Louis Railroad Company, that

The Carrier shall by appropriate award and order be required to compensate the incumbents of the Agent-operator positions at Talbot, Indiana and Clarence, Illinois for service on rest day Saturday, September 10, 1949, and at Hobbs, Indiana, Saturday, September 10 and 24, 1949, in accordance with the provisions of Rule 4½-II-B-2 (Call Rule) of the current agreement between the parties, for service performed on such dates pursuant to instructions of the Carrier.

EMPLOYEES' STATEMENT OF FACTS: Hobbs and Talbot, Indiana, as well as Clarence, Illinois, are one-man stations on the Carrier's LE&W district. An agent-operator under the agreement is employed at each station.

With the advent of the 40-hour work week, effective September 1, 1949, the incumbents of these one-man stations were placed on a 5-day work week basis with Saturdays and Sundays as their assigned rest days. The position at Hobbs had assigned hours 7:00 A. M. to 4:00 P. M., with one hour for lunch; the position at Talbot had assigned hours 7:15 A. M. to 4:15 P. M., with one hour for lunch; and the position at Clarence had assigned hours 8:00 A. M. to 5:00 P. M., with one hour for lunch.

Under date of September 6, 1949, the Carrier issued the following circular letter addressed to a large number of its agents including the agents at Hobbs and Talbot, Indiana, and Clarence, Illinois:

"It will be necessary to protect the delivery of pay checks on Saturday, September 10, and you should arrange accordingly.

At some points there are regularly assigned employees on duty; at other points employees are on call for other service and can protect; others a call will be required for that purpose.

Please advise by return mail the approximate number of pay checks generally handled and the additional expense there will be, if any, to make delivery." (underscoring made by Carrier)

4½-II-B-2 of the agreement effective September 1, 1949. There is a vast difference between delivery of a pay check to an employee and calling for one's own pay check.

As set forth in the Statement of Facts, all agents on the Lake Erie and Western District were instructed under dates of September 6 and 21, 1949, that pay checks would be available on the two Saturdays indicated and that arrangements should be made to protect the delivery of pay checks at points where such delivery was required. These agents were also advised that a call would be allowed when it was necessary for the agent to come on duty for this purpose. Of course, it was never intended nor can it reasonably or logically be said that an employee could deliver his pay check to himself.

As stated in the Statement of Facts, the agents at Talbot, Hobbs, and Clarence had no checks to deliver. Obviously, therefore, under the instructions issued on September 6 and 21, 1949, they were not required by the Carrier to come on duty on Saturdays, September 10 and 24, 1949. As already stated, the agent-operators were not required to make any delivery of checks at their stations and actually all that the claimants did was to come to their respective station for only their own check by meeting the train, and their checks were **delivered** to them by the baggageman of the train. Had the agent-operator not been there to receive his check, the baggageman would have brought back the check on the next trip.

In the handling of this case on the property the General Chairman took the position that had the claimants not met the train for their pay checks on the dates in question they would have suffered two or three days delay in the receipt of their pay checks. Whether or not this is true is immaterial to the issue and, in any event, it does not require the Carrier to pay penalty time to avoid such delay. The Carrier has no objection to the employees calling for their pay checks when such checks are available to them on their rest days, on their own time to avoid delay in the receipt of their pay checks. However, there is nothing in the rules to require payment of a call in such instances.

Other crafts such as section men, shop men, signalmen, clerks, etc., have similar call rules and without question called for their pay checks on their rest days on their own time. In fact this is exactly what all the other numerous agent-operators did at one-man stations where only their own checks were involved.

Since the claimants were not required to perform service on the dates in question, they are not entitled to payment of a call under Rule 4½-II-B-2. The claim, therefore, is without merit and should be denied.

All data submitted in support of the Carrier's position have been presented to the duly authorized representative of the employees and made a part of this particular question.

OPINION OF BOARD: The parties hereto agree that there is no dispute on relevant facts. Claimants, at the time in question, were holding positions as agent-operator at Clarence, Illinois, and Hobb and Talbot, Indiana.

Each of the stations are one-man stations and the several claimants were each assigned to positions having a five-day week with Saturday and Sunday assigned days of rest.

Respondent on September 6 and 21 issued the following instructions which were received by each claimant at his respective station.

September 6, 1949:

"It will be necessary to protect the delivery of pay checks on Saturday, September 10, and you should arrange accordingly.

At some points there are regularly assigned employes on duty; at other points employes are on call for other service and can protect; others a call will be required for that purpose.

Please advise by return mail the approximate number of pay checks generally handled and the additional expense there will be, if any, to make delivery."

September 21, 1949:

"Pay checks will be delivered Saturday, September 24. This is for your information where necessary to make delivery."

To the above instructions similar if not identical replies were made to the Carrier by each of claimants:

"Number of checks usually handled at this station are one—my own; additional expense will be a two-hour call."

On the dates indicated each claimant met the train carrying his check and subsequently filed the claim shown above, requesting payment for a "call" under Rule 4½-II-B-2 of two hours' pay at the rate of time and one-half. Rule 4½-II-B-2 reads as follows:

"B—Employes, other than those covered by paragraph (A) above shall be paid:

(2)—At the rate of time and one-half with a minimum of two hours for each tour of duty on the rest day other than Sunday."

Claimants assert that the instructions given were clear and absolute, and that no alternative existed other than compliance with the said order. It was contended that failure to comply would have resulted in the late arrival of their pay checks, and that the service performed, on their assigned day of rest, in accordance with instructions, clearly required payment for a "call". Claimants assert that if the Carrier did not intend for them to "protect the delivery" of their own pay checks, sufficient time existed to amend or cancel prior instructions.

Respondent asserted that the instructions above quoted concerned "delivery" of pay checks and were not issued for the purpose or nor could they be construed as requiring payment of claim for receipt of his own check by an individual. It is contended that no service was performed at the times and places in question; thus there was no compensation due under the cited Rule. The Carrier contended that it is custom and practice for employes to call for and receive their checks when off duty.

The respective positions of the parties are expressed with both brevity and clarity. This is no dispute on the facts.

Each of the named stations were one-man stations, with the claimants being the incumbent of the one position at each station. In receiving and interpreting the above instructions each of the claimants knew or should have known that no other employe (other than himself) received pay checks at the station where he worked and that he would be receiving and calling for only his own pay check.

Claimants fail to refute Carrier's assertion that it is the custom and practice for employes to call for their own checks when off duty.

It can not be properly held that in receiving their own pay check on their day of rest constituted service at the demand, or in the service of the Carrier and as such compensable under the cited Rule.

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 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

The claim is without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 26th day of March, 1952.