

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Lehigh Valley Railroad, that:

1. Carrier violated Article 1 of the Agreement when on January 18, 22, 25; February 1, 2, 3, 8, 9, 12, 15; and March 2, 8, 12, 16, 1954, it caused, required or permitted employes not covered by the Telegraphers' Agreement to handle (receive copy and deliver) Track Car Permits (Form T.C.) at Mountain Top, Pennsylvania.
2. Carrier shall be required to compensate the senior idle telegrapher (extra in preference), on the Wyoming Seniority District, for eight (8) hours, at the rate of pay applicable to Mountain Top, for the violations occurring on January 18, 22, 25; February 1, 2, 3, 8, 9, 12, 15; March 2, 8, 12, 16, 1954, at Mountain Top.
3. Carrier violated Article 1 of the Agreement when on the 25th day of January; February 8 and 15, 1954, it caused, required or permitted employes not covered by the Telegraphers' Agreement to handle (receive, copy and deliver) Track Car Permits (Form T.C.) at Mahoning, Pennsylvania.
4. Carrier shall be required to compensate the senior idle telegrapher (extra in preference), on the N. J. & L. Seniority District, for eight (8) hours, at the rate of pay applicable to Mahoning, for the violations occurring on January 25th, February 8 and 15, 1954, at Mahoning.
5. Carrier shall be required to permit joint check of its record for the purpose of ascertaining the names of employes entitled to receive such compensation for each day of violation and for the purpose of determining any subsequent violations at Mountain Top and Mahoning as above set forth.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an agreement between the Lehigh Valley Railroad Company, hereinafter referred to as Company or Carrier, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers, governing rates of pay, rules and working conditions for employes covered thereby. The agreement

The Carrier respectfully submits that this claim is entirely without merit, and requests the Board to deny this claim.

The facts presented in this submission were made a matter of discussion with the Committee in conference on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The question herein is whether the Carrier violates the Telegrapher Agreement when it permits or requires track car drivers not covered by that Agreement to handle track car permits at points where no telegrapher is assigned. Under Agreement Rules such as those involved herein past practice on the property is of paramount importance in resolving the dispute.

The evidence of Record herein unequivocally establishes that at points where no telegrapher is assigned the practice complained of herein has been in effect on this property for many years (see Carrier Exhibits Nos. 1 thru 6), extending back as far as 1917 (Carrier Exhibit No. 1). Indeed, the practice was specifically written into the Carrier's Operating Rule 80 in 1944, and that Rule has been in effect since that date; the present Claim, filed in 1954, is the first Claim asserted under the practice. Moreover, the applicable Agreement was executed with said practice and Operating Rule 80 in the background. Finally, it should be noted that the Employees have submitted no concrete evidence to show that, at points where no telegrapher is assigned, past practice has been other than as indicated by the Carrier's evidence.

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 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

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1957.