

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Delaware and Hudson Railroad, that:

1. Carrier violated the agreement between the parties hereto when on the 15th day of April, 1955, it caused, required and permitted Mr. Hart, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 3 at Bluff Point, New York.

2. Carrier violated the agreement between the parties hereto when on the 8th day of April, 1955, it caused, required and permitted Mr. Seguin, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 215 at CV Cabin, New York.

3. Carrier violated the August 21, 1954 Agreement between the parties hereto when and because its officers, agents and other designated representatives failed and refused to comply with Article V, Section 1 (a and e) thereof, in each of the foregoing claims, and thereafter failed and refused to allow such claims as provided in said agreement.

4. Carrier shall be required to compensate the senior idle telegrapher, extra in preference, on the Champlain Division seniority roster, for 8 hours (one day) at the minimum telegrapher's (telephone operator) rate on such Division for each violation as hereinabove set forth.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect an agreement between The Delaware and Hudson Railroad Corporation, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Telegraphers or Employees. The agreement became effective on the first day of July, 1944.

such period of time it appears that this has become a standard practice, acquiesced in by employees and that the parties have placed their own interpretation on the same. And such being so, it is not the province of this Division of the Board to interpret the rules for them."

In Award 7153, the claim was dismissed based on long-established practice under existing rules. The following is quoted from the Opinion in Award 7153:

"Both parties were fully cognizant of the provisions of Rule 217, and the practice under it, at the time of the adoption of their Agreement in 1939. Had there been any serious intention to change this, more definite language to that end should have been added in the Scope Rule or at some other point in the Agreement. Failure to do this in 1939, and failure to do it in the 1946 negotiations leads us to the conclusion that the parties have not agreed to change the long-established practice. It is a matter for further negotiation. It is not for us to read into the language of the Scope Rule something which the parties themselves have quite obviously omitted."

It is the carrier's position that claim should be dismissed account not presented in accordance with rule covering handling of claims and grievances as contained in the National Agreement of August 21, 1954; if decided on its merits, the claim should be denied account not supported by agreement rules and practices thereunder.

Management affirmatively states that all matters referred to in the foregoing have been discussed with the committee and made part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: In order to prevent delay due to unexpected train movements, on the two occasions here involved train orders were copied and handled by train conductors at blind sidings, assertedly in violation of the Agreement. Admittedly the same basic issues are involved as in Docket TE-8374, arising on the same property and decided in Award 9204.

However, unlike that docket, the claims here arose subsequent to the effective date of the Agreement of August 21, 1954, and the Organization contends that the officers of the Carrier violated Article V in its requirement that should a claim be disallowed Carrier shall give notice in writing of the reasons for disallowance, otherwise the claim shall be allowed as presented.

Carrier in turn contends that the Organization has violated the requirement of that Agreement that all claims must be presented in writing by or in behalf of the employee involved; that no employee involved has been named, therefore there is no valid claim to be sustained.

As to Carrier's contention: claim here is made that Carrier be required to compensate the senior idle telegrapher, extra in preference, on the Champlain Division roster. While not named, he was so described that he could readily be identified by Carrier from its roster without further evidence. There are conflicting views on this issue as shown in Award 1214 of the Fourth Division and the dissent and answer to dissent thereto. We believe the intent of the requirement was complied with.

As to the contention of the Organization: the provisions of the Agreement requirement of notice in writing of the reasons for disallowance may be indefinite and ineffective to accomplish its purpose but we may not ignore it entirely. On one of the steps of appeal of each claim here Carrier simply declared: "claim denied" with no pretence of reason. Thereby it violated the Agreement.

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 Agreement was violated.

AWARD

Claims sustained as presented.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of January, 1960.

DISSENT TO AWARD NO. 9205, DOCKET NO. TE-8492

Award 9205 is in error for not dismissing the instant claim in conformity with Fourth Division Award 1214, which is cited by the majority herein. While that Award was in conflict with the views of the Labor Members on the Fourth Division, Award 1214, supra, is in harmony with the many Awards of all Divisions of this Board which interpret the identical language of the rule involved herein.

For the foregoing reason, we dissent.

/s/ W. H. Castle

/s/ J. E. Kemp

/s/ C. P. Dugan

/s/ J. F. Mullen

SUPPORTING OPINION, AWARD 9205, DOCKET TE-8492

The Carrier Members, in their dissent to this award, find fault only with the Referee's not following the opinion of Fourth Division Award 1214.

The reasons for not having followed that award are obvious. It has been overruled a number of times on the Fourth Division itself. See, for example, Awards 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327. Further, the

author of Award No. 40, Special Board of Adjustment No. 170, has shown the fallacy of applying the reasoning of that award to claims of this nature, as was done in Award 1214. See Award No. 46, Special Board of Adjustment No. 170.

Further, awards such as 2569, 5107, 5923, 6100, 7859, 8767 of this Division refute the dissenters' inference that Fourth Division Award 1214 is "in harmony" with an established interpretation of the language of the rule involved.

But perhaps the most persuasive circumstance is the fact that the author of Award 1214 has, since writing that award, reversed himself and found that language identical to that of the rule here involved does not require the identification of claimants by name. Award 8506 of this Division.

The interpretations place upon Article V of the August 21, 1954 Agreement by Award 9205 are soundly reasoned and correctly applied.

J. W. Whitehouse,
Labor Member.