

Award No. 11464

Docket No. TE-9528

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Martin I. Rose, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad, that:

1. Carrier violated agreement between the parties when on May 18, 1956, it required Engineer Train No. 85, an employe not covered by Telegraphers' Agreement, to carry train order No. 11 from Monroe, North Carolina to Waxhaw, North Carolina (a point where an agent operator is regularly assigned; not on duty, but subject to call) and there deliver (handle) said order to Train No. 82.

2. Carrier shall be required to compensate extra operator F. D. Clark, the assigned agent-operator, Waxhaw, for one call (2 hrs. at time and one-half rate of such position) account violation aforesaid.

EMPLOYEES STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement, entered into by and between Seaboard Air Line Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The agreement was effective October 1, 1944. The agreement, as amended, is on file with this Division and is, by reference, made a part of this submission as though set out herein word for word.

The dispute submitted herein was handled on the property in the usual manner, through the highest officer designated by Carrier to handle such disputes and failed of adjustment. Since the dispute involves the interpretation of the collective bargaining agreement, it is, under the provisions of the Railway Labor Act, as amended, properly submitted to this Division for decision and award.

The dispute involves the proper application of the following rule of the agreement:

RULE 24—HANDLING TRAIN ORDERS:

"No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or

Unfortunately, due to further delays incurred by Trains 85 and 29, the advance planning by the dispatcher, as occasionally happens to the best laid plans of mice and men, went for naught as Second 82 ultimately had to remain at Waxhaw for No. 29.

Had Claimant Clark resided within a reasonable distance of Waxhaw, he would have been called or compensated as provided by Rule 24. There is no dispute as to payment being allowed when a train order is handled by others than operators at points where operators are employed and are known to be available or capable of being promptly located. Such payments have been made in the past and doubtless will be made in the future.

It is an indisputable fact that in order for an employe to be a successful claimant, he must comply with the cardinal requirements of availability.

Certainly it is unreasonable for an employe to attempt to assert that he is available simply because it might be possible to contact him, despite the fact that undue delays to trains will occur before he can eventually be in position to render service, or in the alternative, if the Carrier is unwilling to suffer such delays, a penalty payment must be made to such employe.

Carrier affirmatively asserts that all data herein has been discussed with or is well known to the General Chairman of the petitioning organization.

OPINION OF BOARD: The parties are in agreement as to the relevant facts. It is also agreed that Rule 24 is the controlling rule.

At Waxhaw, North Carolina, Carrier maintains a telegraph or telephone office. There is one position classified as Agent-operator. Assigned hours are 7:50 A. M. to 4:50 P. M., with one hour out for meal.

On May 18, 1956, at 1:15 A. M., Carrier's train dispatcher issued to operator on duty at Monroe, North Carolina, train order No. 11, addressed to C&E No. 85 at Monroe and C&E Second 82 at Waxhaw care No. 85. This train order was carried by train service employe on No. 85, leaving Monroe at 2:11 A. M., to Waxhaw, a distance of 12.1 miles, and there delivered to Conductor and Engineer of Train Second 82 as directed.

Rule 24 provides:

"No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in emergency, in which case the operator will be paid for the call.

"It is not the purpose of the management to require other than those covered by this agreement and train dispatchers to handle train orders, excepting under conditions of an emergency nature, such as accidents, personal injury, washouts, fires, engine failures, or such other similar causes. Advice that train orders were handled in such emergencies will be promptly furnished the operator at the office where handled, so that claim for call may be made. At offices where two or more shifts are worked, the operator whose tour of duty is nearest the time such orders were handled will be entitled to the call."

Claimant here is F. D. Clark, who was occupying position of Agent-operator at Waxhaw. He claims one call, under provisions of Rule 8, reading:

"When notified or called to work outside of established hours employees will be paid a minimum allowance of two hours at over-time rate."

It is agreed by the parties that there was no emergency and that employees other than those covered by the Agreement handled a train order at Waxhaw, a point where an operator is employed. Carrier's defense is that claimant resided at Rock Hill, a distance of 22 miles from Waxhaw; and, therefore, was not available to perform the work of handling the train order. It is agreed, however, that no effort was made by the Carrier to call the claimant.

We have passed on the question of availability, under similar rules, many times. It will suffice to point to our holding in Award 8260, as follows:

"The Carrier's second defense is to the effect that Claimants were not available on the two occasions at issue. However, the record does not show that the Carrier made any effort whatsoever to ascertain whether or not Claimants were readily available to accept a call and perform the work within the time limits involved. Normally the Division has accepted unavailability as a defense only after the Carrier made a reasonable effort to ascertain if the employee entitled to a call was in fact available. No such effort was made here. Under the circumstances revealed in this record, and in view of the requirements of Article 23(a) we have no alternative but to sustain the claim. Awards 1096, 3880 and 4200."

Since the Carrier did not attempt to call or locate the claimant, it cannot now question his availability. Claim will be sustained.

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

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May 1963.