Award No. 11578
Docket No. TE-10444

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, 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) Claim is hereby made for a day's pay at the minimum telegrapher's rate on the seniority district, $2.05 per hour for the senior available telegrapher, extra in preference, account Carrier violated the Agreement when on February 13, 1957, it caused, required or permitted Trainman Valastro to handle Train Order No. 4 at "SJ Cabin."

(2) There being no extra telegrapher available on this date, the senior available telegrapher being R. E. Deso, who was available and was not called, the Carrier will now compensate Telegrapher Deso for one day's pay at time and one-half account rest day.

(3) Carrier violated the rules of the agreement when on February 16, 1957, it caused, required or permitted Trainman Thomas, Extra 4107 So. to handle 19 Train Order No. 4 at "SJ Cabin."

(4) Carrier shall now compensate the senior available telegrapher, extra in preference, one day's pay at the minimum rate on the seniority district, $2.05 per hour. There being no extra telegrapher available, carrier shall compensate the senior available telegrapher, E. R. Hayes, at the rate of time and one-half account Telegrapher Hayes on rest day.

EMPLOYES' STATEMENT OF FACTS:

1. There was on the date of this claim in full force and effect a collective bargaining agreement between the Delaware & Hudson Railroad Corporation, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The agreement was effective July 1, 1944, and is on file with this Division. The agreement, by reference, is included in this submission as though set out herein word for word.

In Award 7153, Referee Larkin, 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."

The carrier would also call attention to Awards 8037 and 8038, Referee Elkouri, involving the same parties and the same agreement. The claims covered by these awards were the same as the claims in the instant docket and one of the claims involved the same location. The claims in Awards 8037 and 8038 were dismissed. It is the carrier's position they should have been denied. In any event, the employes did not submit sufficient evidence to support their claims in Awards 8037 and 8038 and nothing additional has been submitted to support the instant claims.

Insofar as the minimum day claim, at time and one-half, is concerned, if it is found that any compensation is due, it could not be more than the minimum call provided in Article 3 (d) of the agreement which reads as follows:

"(d) . . .

> Employes called or notified to perform work not continuous with the regular work period will be allowed a minimum of three (3) hours for two (2) hours' work or less, and if held on duty in excess of two (2) hours, time and one-half will be allowed on the actual minute basis."

It is the Carrier's position that claim should be denied account claimants not available to perform the service required, and long-established practice, without claim or protest, of other than telegraphers copying train orders at points where telegraphers were not employed or on duty.

The claim is not supported by agreement rules and practices thereunder and carrier respectfully requests that it be denied.

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

(Exhibits not reproduced.)

OPINION OF BOARD: There have been a number of disputes before this Board involving the same parties, the same Agreement and all premised on similar facts. See Awards Nos. 7955, 9204, 9262, 10432, 10912 and 11160.

Having found that the awards above mentioned are controlling here, we must conclude that the claims herein are without merit and must, consequently, be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1963.