

Award No. 11921
Docket No. TE-10686

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
CHICAGO GREAT WESTERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway that:

1. Carrier violated the agreement between the parties when it failed and refused to compensate R. O. Jones, Agent-Telegrapher, North Hanover, Illinois for a call under Rule 16 on February 14, 1957 when a train service employe copied a train order at North Hanover.
2. Carrier shall compensate R. O. Jones in the amount of a minimum call payment at the rate of his position.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

North Hanover, Illinois, is a one-man station with one position of agent-telegrapher, assigned hours 7:30 A.M. to 11:30 A.M., and 12:30 P.M. to 4:30 P.M., work week beginning on Mondays, assigned rest days Saturdays and Sundays, position not represented on rest days. On February 14, 1957, operator R. O. Jones was assigned to the position.

At 8:15 P.M. on February 14, 1957, a train service employe, member of the crew of train No. 143, handled (received, copied and delivered) a train order at North Hanover in an emergency.

The applicable rule is Rule 16 which reads:

**RULE 16
HANDLING TRAIN ORDERS**

"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 an emergency, in which case the telegrapher will be paid for the call. (See Addendum No. 3)."

at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call. (IV. R.L.B. 745.)

Opinion.—In the opinion of the Railroad Labor Board the evidence in this case indicates that Operator Kurtzman was not "available" within the meaning and intent of rule 16.

Decision.—Claim denied.

It will be observed that both of the above decisions involve claims in behalf of a telegrapher for a call allowance because train and enginemen were used to transmit and receive train orders by telephone at a telegraph or telephone office where an operator was employed. Like the instant case, the rule relied on by the Employees in the cited decisions was Rule 16 which is identical to Rule 16 involved here. Claims involved in Decisions 3826 and 3917 were denied because claimants were not available within the meaning and intent of Rule 16.

In other words, the same Board which promulgated Rule 16 in Decisions 757 and 2025, in subsequent Decisions 3826 and 3917 interpreted said Rule 16 in the same manner as has the Carrier in the instant case, i.e., claim for call allowance depends upon the availability of the operator to perform the service. In adjudicating the instant case, great weight must be given United States Railroad Labor Board Decisions 3826 and 3917 because they involve an interpretation of a new rule by the authors thereof shortly after said rule became effective. Certainly the framers of a rule are the best authorities to interpret the intent and purpose of their own decree.

In the prosecution of this case the Employees seek to delete or ignore the availability provisions of Rule 16. Under the Railway Labor Act, this Division is required to give effect to the collective agreement as written and adjudicate this dispute in accordance therewith. The issue involved in this dispute is a narrow one in that it is limited to an interpretation of Rule 16 wherein the unavailability of claimant is not disputed. This issue has been ruled upon previously (United States Railroad Labor Board Decisions 3826 and 3917) and in the circumstances we respectfully request this Division to reaffirm the findings of the United States Railroad Labor Board and deny the instant claim.

Carrier affirms that all data in support of its position has been presented to the other party and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves the interpretation of a Rule concerning the handling of train orders. Rule 16 of the Agreement between the parties 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 an emergency, in which case the telegrapher will be paid for the call."

The Claimant lives 70 miles away from his work station and an emergency came up. The Carrier takes the position that the Claimant, being 70 miles away, was unavailable and could not have been contacted and have arrived at his station in time to handle the train order; Rule 16 provides that no employe other than telegraphers and train dispatchers will be permitted to handle train orders where an operator is employed "and is available or can be promptly located." Since the Claimant was not available and could not be promptly located he is not entitled to be paid.

Petitioner states that the precise question is whether availability of the employe is relevant when a train order is handled by a train service employe under circumstances constituting an emergency. The exception in Rule 16 here is favorable to the Carrier in an emergency. Its quid pro quo is "in which case the telegrapher will be paid for the call."

There is nothing in the record which would show what the past practice of the parties has been in such a situation. Without such guidance it would seem that the Claimant is entitled to be paid for the call.

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 Carrier violated the Agreement.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD.
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November 1963.