

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY  
(Western District)

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central Railroad (Lines West of Buffalo), that:

1. The Carrier violated the parties' Agreement when, on August 11, 1958, it prevented R. O. Vorhis, Jr., from working his regular assignment on the first shift Operator-Switchtender position at Durham, Indiana.

2. The Carrier shall, because of the violation set forth above, compensate R. W. Vorhis, Jr., a day's pay (8 hours) at the straight time rate of the position occupied, or to which entitled.

**EMPLOYEES' STATEMENT OF FACTS:** There is in evidence an Agreement by and between the parties to this dispute effective January 1, 1955, as amended.

R. O. Vorhis, Jr., is the regularly assigned occupant of Rest Day Relief Position No. 6 scheduled to work as follows:

Sundays	6:30 A. M. - 2:20 P. M.	HF South Bend, Indiana
Mondays	7:00 A. M. - 3:00 P. M.	FS Durham, Indiana
Tuesdays	11:00 P. M. - 7:00 A. M.	B Elkhart, Indiana
Wednesdays	10:00 P. M. - 6:00 A. M.	BC Elkhart, Indiana
Thursdays	10:00 P. M. - 6:00 A. M.	RT Elkhart, Indiana
Fridays and Saturdays	Rest Days.	

Headquarters station: Elkhart, Indiana. Claimant resides at Elkhart.

Durham the locale involved in this claim is located 48.19 miles west of Elkhart.

4. Awards of the First and Third Divisions, NRAB, fully support the position of the Carrier.
5. The claim is wholly without merit and should be denied.
6. The fact Claimant did not perform service was the result of his own decision not to contact Carrier's representative and report he would be late.

**OPINION OF BOARD:** Prior to August 11, 1958, Claimant R. O. Vorhis, Jr. was on an authorized leave of absence for National Guard service from his position as rest day relief Operator-Switchtender with headquarters at Elkhart, Indiana. Upon his return from the National Guard encampment, he sent a message by wire to his superior officer at Chicago, Illinois informing him that he would resume his position at the first trick at Durham, Indiana on Monday, August 11, 1958. He reported for work on that date. The reporting time of this assignment is 7:00 A. M. He states that his arrival time was 7:12 A. M., but Carrier insists he checked in at 7:30 A. M. Extra Operator Aschenbrenner, who filled the position during Claimant's military leave, also reported for the day's work on August 11. Mr. Vorhis was sent home for failure to report on time.

He makes claim that Carrier violated the Agreement of the parties when it prevented him from working his regular assignment and deprived him of a day's pay. Carrier denies the claim on the grounds that Operator Vorhis was not available for work at the regular starting time and failed to contact Carrier for permission to be absent from his regular assignment or to be excused for reporting on time. It supports its position with Rule 702 of the Operating Department under the caption Additional General Rules which states, "Employees must report for duty at the required time . . ." It also maintains that its instructions and its policy in effect for many years provide that any operator more than 15 minutes late for work without notifying Carrier will be sent home.

The tardiness of Mr. Vorhis resulted from a tire blowout on his way to work. He started out with an allowance of enough time to travel the 48 miles from his home to reach Durham, Indiana at the proper reporting hour. He attempted to notify Carrier of his difficulty, but because of a communications problem, he decided it would be better to prevent further delay by continuing to drive the remaining seven miles, a 10 minute trip to Durham.

Although there is conflict between the parties as to the time of Claimant's arrival, even using Carrier's time Claimant was, at the most, one-half hour late. Through an oversight, Carrier failed to notify Extra Operator Aschenbrenner that Mr. Vorhis, the regular occupant, was returning to work on August 11th. The immediate availability of Mr. Aschenbrenner made Mr. Vorhis' tardiness far more significant than if Carrier had need to wait for an extra employe to substitute for Claimant. His prompt dismissal appears to us to be related to Carrier's omission in informing the extra employe that his services were no longer needed.

We believe that Claimant was entitled to a hearing under Rule 32 (a). Such a hearing would have afforded him an opportunity to show Carrier the excusable circumstances from which his tardiness stemmed. Moreover, there is considerable dispute between the parties as to the existence of an operating rule and practice whereby Carrier deprives an employe of a day's work if he is more than 15 minutes late without notifying Carrier. Claimant insists he is unaware of such rule or practice. The right of Carrier to expect its employes to report for work on time is, of course, not questioned; however, the circum-

stances in the instant case including Claimant's sincere attempt to report to work on time, his tire blowout, and his efforts to communicate with Carrier to explain his delay along with the presence of an extra employe whom Carrier should have previously notified not to report, lead us to conclude that this tardiness did not justify his dismissal for the day summarily. The claim has merit.

**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 of the parties 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 28th day of September, 1964.

#### CARRIER MEMBERS' DISSENT TO AWARD 12915 DOCKET TE-11506

The majority opinion and the award rendered thereunder is ill-founded—particularly that portion thereof which finds “that Claimant was entitled to a hearing under Rule 32(a).” The refusal of the Carrier to permit Claimant employment on the date in question can not be construed as a “dismissal” or as having “discipline recorded against him” as these terms are accepted and applied by this Board. Admittedly Claimant was late for work in violation of an operating rule, thus effectively disabling himself from performing his assigned day's work—this does not establish a situation of dismissal or discipline as contemplated by Article 32(a).

On the other hand, Article 32(k) permits Claimant to request a hearing if he felt unjustly treated. A comparative study of Articles 32(a) and 32(k) clearly establishes, if one gives due effect to each, that Claimant's right to a hearing (if any there be) must be predicated on Article 32(k). But, Claimant did not request a hearing and therefore Carrier should not be penalized for the lack of one.

For these reasons, among others, we dissent.

C. H. Manoogian  
R. A. DeRossett  
W. F. Euker  
G. L. Naylor  
W. M. Roberts