

Award No. 13713
Docket No. TE-13298

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYES UNION
(Formerly The Order of Railroad Telegraphers)

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Southern Railway System, that:

Claim No. 1

1. Carrier violated the Telegraphers' Agreement when on September 30, 1960, it required Agent-Telegrapher W. B. Keeling at Keysville, Virginia, to place Train Order No. 715 and Clearance Card in train register box, located outside station building where train order and clearance card were picked up by Conductor Train No. 67 of that date, after Agent-Telegrapher Keeling went off duty at 5:00 P.M.

2. Carrier shall be required to compensate Agent-Telegrapher W. B. Keeling for a call of two hours and forty minutes at the overtime rate of \$3.795. Total \$10.12.

Claim No. 2

1. Carrier violated the Telegraphers' Agreement when on the dates shown below and all subsequent dates that it required Agent-Telegrapher W. B. Keeling, Agent-Telegrapher at Keysville, Virginia, to prepare a clearance card and leave it in the register box for trains designated at No. 67 departing Keysville (the initial terminal) when the crews on such trains were called to report for duty after the Agent-Telegrapher's office was closed at 5:00 P.M. each day, Monday through Friday of each week. This is a continuing claim. This claim is submitted for the dates upon which violations occurred as shown below and all subsequent dates on which violations occur. This is a continuing claim and the Carrier should be required to permit joint check of records to ascertain dates when such subsequent violations occurred. Dates of violations: October 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 19, 20, 31 in 1960.

2. Carrier shall compensate W. B. Keeling, Agent-Telegrapher

Keyssville, Virginia, for a call of two hours and forty minutes for each of the dates enumerated above and upon the dates of each subsequent violation.

Claim No. 3

1. Carrier violated the Telegraphers' Agreement when on November 23, 1960, it required Agent-Telegrapher W. B. Keeling at Keyesville, Virginia, to copy Train Order No. 720 and place that order and clearance card in train register box located outside station building, where train order and clearance card were picked up by Conductor Train No. 67 on November 24, 1960, Thanksgiving Holiday on which date the Agent-Telegrapher was not permitted by the Carrier to work.

2. Carrier shall be required to compensate Agent-Telegrapher W. B. Keeling for a call of three hours at the overtime rate of \$3.795. Total \$11.39.

EMPLOYEES' STATEMENT OF FACTS: All three of the claims involved in this dispute arose at Keysville, Virginia. W. B. Keeling is the duly assigned Agent-Telegrapher at Keysville, Virginia, with assigned hours of 8:00 A. M. to 5:00 P. M., one hour for Lunch, 12:00 Noon to 1:00 P. M. His assigned work week is Monday through Sunday with rest days of Saturday and Sunday. His pro rata rate of pay is \$2.53 per hour. Keysville is a one-man station and this is the only position assigned at this location.

Claim No. 1: On September 30, 1960, the Carrier required Agent-Telegrapher Keeling to copy Train Order No. 715 and Clearance Card for Train No. 67 of September 30, 1960. Train Order No. 715 read as follows:

TO: C&E No. 67 at Keysville, Virginia
Do not exceed 25 twenty-five miles per hour handling scale test
cars Jeffers to East Durham. RTN.
Made Complete 8:52 A. M. Keeling Operator."

The Clearance Card read as follows:

"On arrival No. 68—4:52 P. M. September 30, 1960.
TO: C&E No. 67 at Keysville, Virginia
I have one order for your train—Form '19' No's 715 Form '31'
No's none. Keeling, Operator."

After the Carrier had required Agent-Telegrapher Keeling to copy said Train Order and Clearance Card, he was instructed before he went off duty to place both the Train Order and the Clearance Card in the train register box located outside the station office, so that it might be picked up by the crew of Train No. 67 after he went off duty at 5:00 P. M. The so-called register box is arranged so that it can be locked using the standard railroad lock. The crews of all trains carry a key which will open this lock. This Order and Clearance Card were picked up by the crew of Train No. 67. In essence it placed a speed restriction against that train between Keysville and Jeffers and Train No. 67 was moved in accordance with the provision of Train Order No. 715.

Claim No. 2: On October 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 17, 19, 20, 31 of

1960, the Carrier required Agent-Telegrapher Keeling at Keysville, Virginia to prepare Clearance Cards and leave them in the train register box for trains designated as No. 67 departing Keysville, which was the initial terminal for this train. The Clearance Cards were prepared while Claimant Keeling was on duty and he was instructed after he closed his office at 5:00 P. M. to place the Clearance Cards in the register box for delivery to the train, after he had gone off duty. Prior to July 15, 1960, Claimant Keeling was paid overtime and calls for the performance of this work.

As a typical example of the Clearance Cards, we quote the Card prepared on October 3, 1960:

"Form 603

SOUTHERN RAILWAY SYSTEM

"On arrival No. 68 Clearance Card

4:30 P. M., October 3, 1960

TO: C&E No. 67 at Keysville, Virginia

I have no orders for your train.

Form '19'—No's. None

Form '31'—No's. None

Block.....Keeling, Operator.

.....Conductor.....Engineman.

"Manifold copies will be made for each conductor, engineman and operator, as prescribed by rules.

None—The notation 'Block clear' or 'Block occupied' will be used only in connection with a manual block."

On each of the other days involved in this claim a similar Clearance Card was issued and left in the register box by Claimant Keeling. On all dates when Train No. 67 is called to go on duty before 5:00 P. M., the Clearance Card with Train Orders if any are manually and personally delivered to a member of the train crew authorized to receive them by Claimant Agent-Telegrapher Keeling.

During the handling of this claim on the property the Carrier questioned the date of October 14, but further investigation showed that on this date, No. 67's crew was called for 5:00 P. M. at Keysville, which was the same time that Claimant was due to end his tour of duty for that day. At 4:30 P. M., Friday, October 14, 1960, Claimant furnished the Dispatcher information that No. 67 was called for 5:00 P. M., giving the Conductor's and Engineer's name and asked that No. 67 be cleared on arrival of Train No. 68. Dispatcher then instructed Claimant to clear No. 67 on arrival No. 68 with no Orders. Clearance Card for No. 67 was placed in the register or bill box. Train crew for No. 67 had not come to the telegraph office when Claimant completed his tour of duty and left the office at 5:00 P. M.

Claim No. 3: On Thanksgiving Day, a Holiday, Thursday, November 24, 1960, the Carrier closed the telegraph office at Keysville, Virginia. On November 23, 1960, the Carrier required Agent-Telegrapher Keeling to copy Train Order No. 720, made complete at 2:08 P. M., on November 23, and prepare Clearance Card Form 603, dated November 23, 1960, clearing Train No. 67 of November 24, 1960, with one Order No. 720, and to place both the Clearance Card and the Train Order on the train register and leave in the train register

box located outside the station to be picked up by the crew of Train No. 67 when that crew reported for duty on November 24, 1960.

In all three claims the Employees filed individual claims for a call payment for Agent-Telegrapher W. B. Keeling. The call payment in Claim No. 1 and the individual claim dates in Claim No. 2 were for a call of two hours and forty minutes at the overtime rate of \$3.795 per hour. The claim in Claim No. 3 was based on the call payment of three hours at the overtime rate because of the fact that this was a holiday.

All claims were appealed to the highest officer designated by the Carrier and declined by him. The claims are now properly before your Board for final adjudication.

POSITION OF EMPLOYEES: While all the rules of the Agreement apply to this dispute, the Employees call in particular attention to the following rules:

"RULE 1—SCOPE

"(a) This agreement applies to all telegraphers, telegrapher-clerks, telephone operators (except telephone switchboard operators), agent-telegraphers, agent-telephoners, towermen, levermen, block operators and staffmen, operators of mechanical telegraph machines, wire chiefs, assistant wire chiefs, or analogous positions hereafter established; also such station agents and assistant station agents and ticket agents as are listed herein.

"(b) The word 'employee' as used in these rules will apply to all the foregoing classes, and employees will be classified according to duties performed."

* * * * *

"RULE 10—CALLS

"(a) Except as otherwise provided in these rules, employees called to perform work outside of established hours will be paid a minimum of two (2) hours and forty (40) minutes at time and one-half rate for two hours and forty minutes' work or less, additional time calculated on minute basis at time and one-half.

"(b) For work in advance of and which continues to starting time of regular work period, employees will be paid a minimum allowance of one hour at time and one-half rate for one hour or less, additional time calculated on minute basis at same rate."

* * * * *

"RULE 17—HOLIDAY WORK—REST DAY WORK (Effective September 1, 1949)

"Section 1—Holiday Work

"Time worked on the following holidays—namely, New Year's day, Washington's Birthday, Decoration Day, Fourth of July, Labor Day, Transgiving Day, and Christmas (provided when any of the above holiday fall on Sunday the day observed by the State, Nation

and should be denied, carrier calls the Board's attention to the fact that Claim No. 2 covers fourteen specific dates during the period October 3 through 31. Obviously, therefore, it cannot be considered as a continuing claim. Normally, or other than during the tobacco season, Train 67 leaves Keysville before the agent-telegrapher goes off duty at 5:00 P.M. By listing fourteen specific dates in a twenty-nine day period, the employes themselves recognized that it is not properly a continuing claim of the type covered by Article V, Section 3 of the August 21, 1954 Agreement. If it were, the filing of one claim for the first date would have been sufficient.

The evidence of record does not support petitioner's contention that the agreement was violated, nor does it support the claims for pay. For the reasons set forth herein, the claims should be denied in their entirety, and carrier respectfully requests that the Board so decide.

(Exhibits not reproduced).

OPINION OF THE BOARD: Three claims are presented. In each the same parties, Agreement and Rule are involved as in Award No. 13712.

Claims No. 1 and No. 3

Claims No. 1 and No. 3 present the same issue as in Award No. 13712. For the reasons stated in that Award we will sustain Claims No. 1 and No. 3.

Claim No. 2

This claim differs from the other two in that:

1. On all dates specified only clearance cards were left for pick-up by train service employes—this gives rise to an issue as to whether the clearance cards were train orders within the contemplation of the "standard train order rule;"
2. An allegation that: "This is a continuing claim. This claim is submitted for the dates upon which violations occurred as shown below (14 specified dates) and all subsequent dates on which violations occur;" with the prayer that Carrier be required "to permit joint check of records to ascertain dates when such subsequent violations occurred;" and
3. Whether, the damages prayed for—"for a call on each of the dates enumerated"—is the appropriate contractual measure of damages.

Train orders govern the movement of trains. The record makes clear that the movement of the trains involved on the specified dates was subject to receipt of clearance cards by train service employes. We find, therefore, that in substance the clearance cards were train orders within the contemplation of the "standard train order rule;" and, the Carrier violated the rule on the dates specified, other than on October 14, 1960. It is uncontradicted that on October 14, 1960, the crew of the train involved went on duty at the exact time that Claimant was due to leave. We will deny the claim insofar as it relates to October 14, 1960.

The record does not support the allegation of a "continuing claim". We deny the claim to the extent of this allegation and the prayer for a "joint check of records to ascertain dates when such subsequent violations occurred."

In its presentation of Claim No. 2, Petitioner says in its Submission that:

"Prior to July 15, 1960, Claimant Keeling was paid overtime and calls for the performance of this work."

We find and hold the contractual measure of damages for each alleged violation in Claim No. 2, which we have sustained, is payment either for a call or at the overtime rate in conformity with the practice of monetary compensation immediately prior to July 15, 1960.

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 Carrier violated the Agreement as alleged in Claims No. 1 and No. 3.

That Carrier violated the Agreement as alleged in Claim No. 2 to the extent set forth in the Opinion.

AWARD

Claims No. 1 and No. 3 sustained. Claim No. 2 sustained in part and denied in part as set forth in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1965.

CARRIER MEMBERS' DISSENT TO AWARD 13713, DOCKET TE-13298

(Referee John H. Dorsey)

As reliance is placed upon Award 11788, our dissent to that award is, by reference, made a part of this dissent.

The award here sustains the claim though admittedly the Carrier did not permit employees not covered by the contract to handle the train orders involved. The train orders involved in this dispute were left in train register box by claimant telegrapher and were not subsequently "handled" or even touched by anyone until picked up by the crew to whom they were addressed. Certainly inherent in such a claim is the obligation of petitioner to prove handling by non-contract employees, yet the majority ignored this and followed Award 11788 which sustained the claim merely because other referees in prior awards had committed similar error.

The award is erroneous and we respectfully dissent.

/s/ R. A. DeRossett
R. A. DeRossett

/s/ D. F. Euker
W. F. Euker

/s/ C. H. Manoogian
C. H. Manoogian

/s/ G. L. Naylor
G. L. Naylor

/s/ W. M. Roberts
W. M. Roberts