

Award No. 13934

Docket No. TE-13593

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Rock Island and Pacific Railroad, that:

1. Carrier violated the Agreement between the parties when it refused to compensate Relief Agent-Telegrapher R. W. Brown at Colfax, Iowa for a call account a member of the crew of Train No. 84, an employe not covered by the Agreement, was required or permitted to handle (receive, copy and deliver) Train Order No. 286 at Colfax at a time Agent-Telegrapher Brown was not on duty on May 24, 1961.

2. Because of this violation Carrier shall be required to compensate R. W. Brown in the amount of one call.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties, effective August 1, 1947 (reprinted to include interpretations and Special Agreements to November 1, 1956), as supplemented and amended, is available to your Board and by this reference is made a part hereof.

Colfax, Iowa, is a one-man station at which the position covered by the Agreement is classified as agent-telegrapher, assigned to work from 7:00 A.M. to 12:00 Noon and 1:00 P.M. to 4:00 P.M., Monday through Friday. The station is closed on Saturday and Sunday.

Train No. 84 is a regularly scheduled eastbound freight train which operates daily between Des Moines and Davenport (Missouri Division Junction), Iowa. Carrier's time table shows No. 84 due to depart Colfax at 4:28 P.M. On Wednesday, May 24, 1961, at about 6:00 P.M., when the agent-telegrapher was not on duty, a member of the crew of Train No. 84 handled (received, copied and delivered) at Colfax, directly with the train dispatcher, Train Order No. 286.

Because of this violation, District Chairman M. F. Van Gorp presented time claim for a call in behalf of the occupant of the agent-telegrapher

2. Train Order No. 286 was issued to a member of the crew on Train 84 account Train 6 delayed at Des Moines, held to get disabled engine from Train 17 and information was not available to Dispatcher when Train 84 passed last open station, Altoona, Iowa.

3. Dispatcher attempted to call Agent Brown for this service, but was unable to locate him as Agent Brown had left no phone number as to where he could be reached if needed. This fact is verified by memorandum to Chief Dispatcher written by trick dispatcher on the claim date:

Bill:

"5-24-61

Unable find relief agt at Colfax tonite for a call so had to give 84 an order No. 286. Rlf Agt hasn't left any Phone No with Newton or Altoona where he can be reached.

4. Rule 24 reads:

G.T.W."

"RULE 24.

HANDLING OF 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, can be promptly located and is available, except in an emergency, in which case the telegrapher will be notified and paid for the call. (See Memorandum No. 27, Page 111.)"

5. Memorandum No. 27, referred to in Rule 24, supplements, but does not supersede Rule 24.

POSITION OF CARRIER: The foregoing facts are not in dispute and have not and cannot be refuted by the Organization. The Organization simply contends that even though the Carrier attempted to locate the claimant, but he could not be located, and was not available for a call, he should be paid the call anyway—the Organization contends this even in the face of express language in Rule 24 denying that contention.

There have been previous cases similar to this which the Organization did not even progress, but, for some reason, here is this one.

This claim is expressly invalid by contract rule. It has no basis of any sort whatever. The claim should be denied.

OPINION OF BOARD: This dispute arose as a result of a train service employe's receiving a train order by telephone at Colfax, Iowa, at a time when the telegrapher employed there was not on duty. Claim was filed for a "call" payment in favor of the relief agent-telegrapher, the Organization relying on Rule 24, which reads as follows:

"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, can be promptly located and is available, except in an emergency, in which case the

telegrapher will be notified and paid for the call. (See Memorandum No. 27, Page 111)."

It is clear that the Memorandum referred to is not involved in the present case.

The record contains some desultory debate about whether the circumstances requiring the train order constituted an emergency within the meaning of the rule. This question need be given no consideration because it is not determinative of the question at issue.

The Carrier asserts, without contradiction by the Employees, that the train dispatcher who issued the order made an effort to locate the Claimant, but was unable to find him, and that he had not indicated a means of reaching him by telephone.

The Employees press their claim on a theory that Rule 24 requires payment of a call when other employees handle train orders, whether an emergency is involved or not, and without regard to the Claimant's availability. In their ex parte submission they state this theory as follows:

"The above quoted rule is free of ambiguity. It provides in clear and concise language that if it is desired to issue a train order at an office where an operator is employed, can be promptly located and is available, no other employee may handle train orders except in emergency. If it develops that the operator cannot be promptly located, or is not available (should such emergency exist), then such operator will be notified and paid for the call. Thus, it is crystal clear that Rule 24 provides for call payment to the operator regardless of whether or not he is available in any instance that an employee not covered by the Agreement (except train dispatchers) handles a train order or orders at the place where the operator is employed. . . ."

The Carrier, in its rebuttal statement, states its contentions as follows:

"Rule 24 means just what it says. At points where operators are employed, if the operator cannot be promptly located, or is not available, then others than those mentioned can handle train orders without payment to anyone whether an emergency exists or not.

If the operator can be promptly located and is available, then others than those mentioned cannot handle train orders except in an emergency. If train orders are handled by other than those mentioned in an emergency, then no payment is due anyone.

However, if the operator can be promptly located and is available and other than those mentioned handle train orders and no emergency exists, in that case the operator will be notified and paid for the call."

It is our judgment that neither the Organization nor the Carrier is entirely correct in their evaluation of Rule 24. They have, however, correctly observed that the rule is free of ambiguity and means what it says.

The rule clearly protects the right of telegraphers (and train dispatchers) to handle train orders at places where a telegrapher is employed.

But this protection is not absolute. The telegrapher must be available; otherwise, the language "can be promptly located and is available" would have no purpose. If, however, the telegrapher can be promptly located and is available, his protection is absolute even if the Carrier elects to invoke the exception in an emergency — "in which case the telegrapher will be notified and paid for the call", just as if he had actually performed the work.

The record before us compels the conclusion that Claimant Brown could not be promptly located, and was not available when the train order was handled by a train service employee. Therefore, his claim must fail.

We note that the language of Rule 24 pertaining to availability is not the same as that found in most similar rules in other agreements. Therefore, our interpretation is limited strictly to the language of this particular rule, and is not to be considered as necessarily applicable to any other rule.

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 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 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 October 1965.