

Award No. 14407
Docket No. TE-14239

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

THE NEW YORK CENTRAL RAILROAD
(Eastern and New York Districts)
(Except Boston and Albany Division)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York Central System (Eastern District), that:

CLAIM NO. 1

1. Carrier violated the Agreement between the parties when on June 14, 1960, it caused, required or permitted Track Supervisor Donnelly, an employe not covered by the Telegraphers' Agreement, to report Rail-Motor Bus B2391 clear at Tappon, New York.

2. In consequence of this violation, the Carrier shall be required to pay the extra telegrapher, first out in the Weehawken Zone, and if no extra telegrapher was available on June 14, the senior telegrapher on his rest day, for eight hours at the rate of \$2.50 per hour.

3. A joint check of the Carrier's records shall be ordered for the purpose of determining the employe entitled to the compensation.

CLAIM NO. 2

1. Carrier violated the Agreement between the parties when on December 28, 1960, it required Conductor Leck, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 103 at Tomkins Cove, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate the idle extra telegrapher, first out in the Kingston Zone, on December 28, 1960, for one day (eight hours) at the rate of \$2.50 per hour for the violation aforesaid. If there was no idle extra telegrapher in the Kingston Zone on December 28, 1960, then the senior telegrapher on his rest day shall be paid for one day (eight hours) at the rate of \$2.50 per hour.

3. A joint check of the Carrier's records shall be ordered for the purpose of determining the employee entitled to the compensation.

CLAIM NO. 3

1. Carrier violated the Agreement between the parties when on February 15, 1961, it required Conductor Leonard, a train service employee not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver), Train Order No. 134 at Tomkins Cove, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate the idle extra telegrapher, first out in the Kingston Zone, on February 15, 1961, for one day (eight hours) at the rate of \$2.60 per hour for the violation aforesaid. If there was no idle extra telegrapher in the Kingston Zone on February 15, 1961, then the senior telegrapher on his rest day shall be paid for one day (eight hours) at the rate of \$2.60 per hour.

3. A joint check of the Carrier's records shall be ordered for the purpose of determining the employee entitled to the compensation.

CLAIM NO. 4

1. Carrier violated the Agreement between the parties when on April 23, 1961, it required Conductor Frank Moran, a train service employee not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 105 at West Nyack, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate the senior idle employee, extra in preference, for one day (eight hours) at the rate of \$2.65 per hour for the violation aforesaid.

3. A joint check of the Carrier's records shall be ordered to determine the employee entitled to the compensation.

CLAIM NO. 5

1. Carrier violated the Agreement between the parties when on December 14, 1960 it required Conductor Dixon, a train service employee not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 136 at West Nyack, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate the idle extra telegrapher, first out in the Weehawken Zone, on December 14, 1960, for one day (eight hours) at the rate of \$2.50 per hour for the violation aforesaid. If there was no idle extra telegrapher in the Weehawken Zone on December 14, 1960, then the senior telegrapher on his rest day shall be paid for one day (eight hours) at the rate of \$2.50 per hour.

3. A joint check of the Carrier's records shall be ordered for the purpose of determining the employee entitled to the compensation.

CLAIM NO. 6

1. Carrier violated the Agreement between the parties when on January 30, 1961, it required Conductor Cahill, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 131 at Cornwall, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate the idle extra telegrapher, first out in the Kingston Zone, on January 30, 1961 for one day (eight hours) at the rate of \$2.50 per hour for the violation aforesaid. If there was no idle extra telegrapher in the Kingston Zone on January 30, 1961, then the senior telegrapher on his rest day shall be paid for one day (eight hours) at the rate of \$2.50 per hour.

3. A joint check of the Carrier's records shall be ordered for the purpose of determining the employe entitled to the compensation.

CLAIM NO. 7

1. Carrier violated the Agreement between the parties when on February 4, 1961, it required Brakeman Fred Chase, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 112 at Cornwall, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate the idle extra telegrapher, first out in the Kingston Zone on February 4, 1961, for one day (eight hours) at the rate of \$2.60 per hour for the violation aforesaid. If there was no idle extra telegrapher in the Kingston Zone on February 4, 1961, then the senior telegrapher on his rest day shall be paid for one day (eight hours) at the rate of \$2.60 per hour.

3. A joint check of the Carrier's records shall be ordered for the purpose of determining the employe entitled to the compensation.

CLAIM NO. 8

1. Carrier violated the Agreement between the parties when on February 6, 1961 it required Conductor Lindhurst, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 116 at Roseton, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate the idle extra telegrapher, first out in the Kingston Zone, on February 6, 1961, for one day (eight hours) at the rate of \$2.60 per hour for the violation aforesaid. If there was no idle extra telegrapher in the Kingston Zone on February 6, 1961, then the senior telegrapher on his rest day shall be paid for one day (eight hours) at the rate of \$2.60 per hour.

3. A joint check of the Carrier's records shall be ordered for the purpose of determining the employe entitled to the compensation.

CLAIM NO. 9

1. Carrier violated Articles 1, 5 and 40 of the Telegraphers' Agreement when on April 19, 1960, it caused, required or permitted Transportation Superintendent Stonehouse, an official not covered by the Telegraphers' Agreement, to perform the work of transmitting communications of record and to perform the work of block operator by telephone at INT "HN", West Haverstraw, New York, before the telephoner-leverman was on duty.

2. In consequence of this violation, Carrier shall compensate F. Huntley, the regularly assigned telephoner-leverman at INT "HN", West Haverstraw, New York, for a call in accordance with the provisions of Article 5.

3. Carrier violated Articles 1, 3, 14, 20, 21 and 40 of the Telegraphers' Agreement when on April 19, 1960, it required Conductor Cahill, a train service employe not covered by the Agreement, to perform the work of transmitting communications of record and to perform the work of block operator by telephone at Roseton, New York, not in an emergency.

4. In consequence of this violation, Carrier shall compensate R. J. Donnelly, idle extra telegrapher, first out, for eight hours at the rate of \$2.374 per hour, plus established mileage allowance as provided in Article 3 and deadheading allowance as provided in Article 14.

5. Carrier violated Articles 1, 3, 14, 20, 21 and 40 of the Agreement when on April 19, 1960, it caused, required or permitted Track Supervisor Kohlman, an official not covered by the Agreement, to perform the work of transmitting communications of record and to perform the work of block operator by telephone at the Central Hudson switch, a distance of one and one-half miles west of Roseton Station.

6. In consequence of this violation, Carrier shall compensate G. W. Trowbridge, idle extra telegrapher, second out, for eight hours at the rate of \$2.374 per hour, plus established mileage allowance as provided in Article 3 and deadheading allowance as provided in Article 14.

CLAIM NO. 10

1. Carrier violated and continues to violate the Agreement between the parties when on September 7, 1960, it caused, required or permitted Conductor Cahill of Train TH-2 to handle communications of record and perform the work of block operator at Cornwall, New York.

2. Carrier shall compensate the idle extra telegrapher, first out in the Kingston Zone, for eight hours at the rate of \$2.50 per hour for each day beginning with September 7, 1960 and continuing until the violation is properly corrected. If there was no idle extra telegrapher in the Kingston Zone on any day, then the senior employe on his rest day shall be paid the compensation.

3. Carrier shall permit a joint check of their records to determine violations subsequent to September 7, 1960.

4. Carrier shall permit a joint check of their records to determine employees entitled to the compensation.

CLAIM NO. 11

1. Carrier violated the Agreement between the parties when on August 23, 1960, it required or permitted Conductor Bechtold of Train TH-2, to handle communications of record and to perform the work of block operator at Milton, New York.

2. In consequence of this violation, Carrier shall be required to compensate the idle extra telegrapher, first out in the Kingston Zone, for one day (eight hours) at the rate of \$2.50 per hour for the violation aforesaid. If there was no idle, extra telegrapher in the Kingston Zone on August 23, 1960, then the senior telegrapher on his rest day shall be paid for one day (eight hours) at the rate of \$2.50 per hour.

3. A joint check of Carrier's records shall be ordered for the purpose of determining the employee entitled to the compensation.

CLAIM NO. 12

1. Carrier violated the Agreement between the parties when on August 4, 1960, it caused, required or permitted Brakeman Kaplan, an employee not covered by the Telegraphers' Agreement, to handle communications of record and to perform the work of block operator at Milton, New York.

2. Carrier shall compensate the idle extra telegrapher, first out in the Kingston Zone, on August 4, 1960 for eight hours at the rate of \$2.50 per hour. If there was no idle extra telegrapher on August 4, the compensation shall be paid to the senior telegrapher on his rest day.

3. Carrier shall permit a joint check of the records to determine the employee entitled to the compensation.

CLAIM NO. 13

1. Carrier violated the Agreement between the parties when on December 20, 1960, it required Engineer Leibert, a train service employee not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 108 at Milton, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate the idle extra telegrapher, first out in the Kingston Zone, on December 20, 1960, for one day (eight hours) at the rate of \$2.50 per hour for the violation aforesaid. If there was no idle extra telegrapher in the Kingston Zone on December 20, 1960, then the senior telegrapher on his rest day shall be paid for one day (eight hours) at the rate of \$2.50 per hour.

3. A joint check of the Carrier's records shall be ordered for the purpose of determining the employee entitled to the compensation.

CLAIM NO. 14

1. Carrier violated the Agreement between the parties when on January 4, 1961, it required Conductor T. B. Cahill, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Orders Nos. 139, 144 and 145 at Milton, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate J. J. Augustine, the idle extra telegrapher, first out in the Kingston Zone on January 4, 1961, for one day (eight hours) at the rate of \$2.50 per hour for the violation aforesaid.

CLAIM NO. 15

1. Carrier violated the Agreement between the parties when on January 6, 1961, it required Conductor Cahill, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 121 at Milton, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate S. J. Buboltz, the idle extra telegrapher, first out in the Kingston Zone on January 6, 1961, for the one day (eight hours) at the rate of \$2.50 per hour for the violation aforesaid.

CLAIM NO. 16

1. Carrier violated the Agreement between the parties when on May 4, 1961, it required Conductor Windburn, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 109 at Milton, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate the senior idle employe, extra in preference, for one day (eight hours) at the rate of \$2.65 per hour for the violation aforesaid.

3. A joint check of the Carrier's records shall be ordered to determine the employee entitled to the compensation.

CLAIM NO. 17

1. Carrier violated the Agreement between the parties when on May 14, 1961, it required Engineman Hublemyer, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 107 at Milton, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate the senior idle employe, extra in preference, for one day (eight hours) at the rate of \$2.65 per hour for the violation aforesaid.

3. A joint check of the Carrier's records shall be ordered to determine the employe entitled to the compensation.

CLAIM NO. 18

1. Carrier violated the Agreement between the parties when on May 16, 1961, it required Conductor Windburn, an employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 115 at Milton, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate the senior idle employe, extra in preference, for one day (eight hours) at the rate of \$2.65 per hour for the violation aforesaid.

3. A joint check of the Carrier's records shall be ordered to determine the employe entitled to the compensation.

CLAIM NO. 19

1. Carrier violated the Agreement between the parties when on May 28, 1961, it required Conductor Fullington and Brakeman Brooks, train service employes not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 107 at Milton, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate the senior idle employe, extra in preference, for one day (eight hours) at the rate of \$2.309 per hour for the violation aforesaid.

3. A joint check of the Carrier's records shall be ordered to determine the employe entitled to the compensation.

CLAIM NO. 20

1. Carrier violated the Agreement between the parties when on September 14, 1960, it caused, required or permitted Crowell, operator of Rail-Motor Bus B-2391, an employe not covered by the Telegraphers' Agreement, to perform the work of transmitting communications of record and to perform the work of block operator, by telephone, at INT "HN," West Haverstraw, New York, before the telephoner-leverman was on duty.

2. Carrier shall compensate F. Huntley, the regularly assigned telephoner-leverman at INT "HN," West Haverstraw, New York, for a call in accordance with the provisions of Article 5.

3. Carrier violated the Agreement between the parties when on September 14, 1960, it caused, required or permitted Crowell, operator of Rail-Motor Bus B-2391, an employe not covered by the Telegraphers' Agreement, to perform the work of block operator, by telephone, at Iona Island, New York.

4. Carrier shall compensate the idle extra telegrapher, first out in the Kingston Zone, for eight hours at the rate of \$2.50 per hour, plus established mileage allowance as provided in Article 3 and

deadheading allowance as provided for in Article 14. If there was no idle extra employe in the Kingston Zone on September 14, 1960, then the senior employe on his rest day shall be paid the compensation.

5. Carrier shall permit a joint check of their records to determine the extra employe or the senior idle employe on his rest day entitled to the compensation.

CLAIM NO. 21

1. Carrier violated the Agreement between the parties when on October 11, 1960, it caused, required or permitted Mr. Patterson, Superintendent Bridges and Buildings, an employe not covered by the Telegraphers' Agreement, to perform the work of telephoner and block operator at Orangeburg, New York.

2. Carrier shall compensate the extra idle telegrapher, first out in the Weehawken Zone on October 11, 1960, for one day (eight hours) at the rate of \$2.65 per hour for the violation aforesaid. If there was no idle extra telegrapher on October 11, 1960, then compensation shall be paid to the senior telegrapher on his rest day.

CLAIM NO. 22

1. Carrier violated the Agreement between the parties when on May 23, 1961, it required Engineman L. Libert, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 113 at West Englewood, New Jersey, not in an emergency.

2. In consequence of this violation, Carrier shall compensate the senior idle employe, extra in preference, for one day (eight hours) at the rate of \$2.661 per hour for the violation aforesaid.

3. A joint check of the Carrier's records shall be ordered to determine the employe entitled to the compensation.

CLAIM NO. 23

1. Carrier violated Articles 1 and 22 of the Telegraphers' Agreement when on April 5, 1960, it required Conductor Slingerland, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 109 at Coxsackie, New York, not in an emergency.

2. Carrier shall compensate F. W. Hartel, senior idle extra employe, for one day (eight hours) at the rate of \$2.368 per hour, plus travel time and mileage.

CLAIM NO. 24

1. Carrier violated Articles 1 and 22 of the Telegraphers' Agreement when on April 6, 1960, it required Conductor Slingerland, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 110 at Coxsackie, New York, not in an emergency.

2. Carrier shall compensate F. W. Hartel, senior idle extra employe, for one day (eight hours) at the rate of \$2.368 per hour, plus travel time and mileage.

CLAIM NO. 25

1. Carrier violated the Agreement between the parties when on August 11, 1960, it required Conductor Leo Brennan, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 101 at Cocksackie, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate the idle extra telegrapher, first out in the Kingston Zone on August 11, 1960, for one day (eight hours) at the rate of \$2.50 per hour for the violation aforesaid. If there was no idle extra telegrapher in the Kingston Zone on August 11, then the senior telegrapher on his rest day shall be paid for one day (eight hours) at the rate of \$2.50 per hour.

3. A joint check of the Carrier's records shall be ordered for the purpose of determining the employe entitled to the compensation.

CLAIM NO. 26

1. Carrier violated the Agreement between the parties when on July 1, 1961, it required Engineman L. Libert, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 110 at Cocksackie, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate the senior idle employe, extra in preference, for one day (eight hours, at the rate of \$2.433 per hour for the violation aforesaid.

3. A joint check of the Carrier's records shall be ordered to determine the employe entitled to the compensation.

CLAIM NO. 27

1. Carrier violated the Agreement between the parties when on July 9, 1961, it required Engineman L. Libert, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 110 at Cocksackie, New York, not in an emergency.

2. In consequence of this violation, Carrier shall compensate the senior idle employe, extra in preference, for one day (eight hours) at the rate of \$2.433 per hour for the violation aforesaid.

3. A joint check of the Carrier's Records shall be ordered to determine the employe entitled to the compensation.

EMPLOYEES' STATEMENT OF FACTS: All of the twenty-seven claims involved in this dispute concern violation of the Agreement when the Carrier required or permitted employes other than telegraphers to handle train orders at other than locations where telegraphers are regularly assigned. The following statement of the facts in each individual case is given for your convenience:

The main track from Weehawken to Selkirk was a double track main line over which trains operated by timetable and automatic block signal indication. During the period of the claims involved herein, which cover a period of from April 1960 to September 1961, the main line was converted to single track, a new absolute permissive block signal system was installed and trains were operated by timetable and train orders.

On the dates shown in the Employees' Statement of Claim, a train or engine crew member of a freight train and/or the operator of a rail motor bus:

- (a) Stopped at a location where no telegrapher was employed;
- (b) Communicated by telephone with the nearest telegrapher on duty;
- (c) Reported his train or vehicle into clear to, or received operating instructions and/or copied a train order from, the nearest telegrapher by telephone.

On April 19 and September 14, 1960, however, the dates involved in claims numbered 9 and 20, the operator of the rail motor bus stopped at West Haverstraw, and communicated from a location where a telegrapher was employed but was not on duty.

The Organization presented the claims individually to Carrier's local supervision and progressed them in the proper stages of appeal as agreed between the parties up to and including Carrier's Highest Appeals Officer.

For each occasion where the communication was made from a point where no telegrapher was employed, the Organization's claim is for 8 hours pay for the idle extra telegrapher, first out in the seniority zone involved in the claim.

For the two occurrences involving the location where telegraphers were employed but not on duty, the Organization presented a claim for a call to be paid to the regularly assigned telegrapher under the provisions of Article 5 of the Agreement between the parties.

On August 29, 1960, Carrier's highest appeals officer advised the Organization that Claimant F. Huntley was being paid for the call as claimed for April 19, 1960. This claim is contained in the Employees' Statement of Claim as Items 1 and 2, Claim No. 9.

On September 22, 1960, Carrier's local supervision advised the local chairman of the Organization that Claimant F. Huntley would be paid for the call as claimed for September 14, 1960. This claim is listed in the Employees' Statement of Claim as Items 1 and 2, Claim No. 20.

Following Carrier's final denial of each of the remaining claims contained herein, Carrier granted the Organization extensions of time in which it could progress these and other claims for adjudication.

(Exhibits not reproduced.)

OPINION OF BOARD: During the period of the claims involved herein, which cover a period from April, 1960, to September, 1961, the main line was

converted to a single track, a new permissive block system was installed and trains were operated by timetable and train orders.

On the dates shown in Employees' Statement of Claim—1. A train or engine crew member of a freight train or the operator of a rail motor bus stopped at a station and sent a communication of record involving the movement of a train or of a rail motor bus where a telegrapher was employed but was not on duty. 2. A train order was communicated at a "blind" station by the members of a train or engine crew. 3. There was communication of a Form M or clearance by the operator of a rail motor bus at a "blind" station.

The provision of the Agreement with which we are here concerned is, as follows:

"ARTICLE 22.

HANDLING TRAIN ORDERS

(a) No employe other than covered by this agreement and train dispatchers will be permitted to handle train orders except in cases of emergency.

(b) If train orders are handled at stations or locations where an employe covered by this agreement is employed but not on duty, the employe, if available or can be promptly located, will be called to perform such duties and paid under the provisions of Article 5; if available and not called, the employe will be compensated as if he had been called."

(We are not concerned with paragraph (c) of Article 22 as it simply defines what is meant by "emergency.")

In the interest of clarity and to avoid possible confusion, a consideration of the Claims will be divided into three parts as indicated in a previous paragraph.

PART 1.

On April 19 and September 14, 1960, the dates involved in Claims Numbers 9 and 20, items 1 and 2, the operator of a rail motor bus stopped at West Haverstraw and communicated by telephone from a location where a telegrapher was employed but was not on duty. Carrier's highest personnel officer advised the Organization these claims would be paid. That resolves those Claims and they will be given no further attention.

PART 2.

This section of the opinion concerns the communication at a "blind" station of a train or engine crew and involves claims Numbered 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26 and 27. It is the position of the Petitioner that the conversations involved in the foregoing claims clearly are transportation communications having a direct bearing on the operation or movement of trains in violation of Article 22 set forth previously in this Opinion.

Carrier, to the contrary, contends that the incidents on which the foregoing claims are based arose at points where there are no employes under

the Telegraphers' Agreement stationed and that Article 22 is consequently not applicable in the instant dispute; furthermore, Carrier contends that Article 22 contains no provision for paying the senior idle employe or employe first out on the extra list a days pay nor is there any such provisions for pay under the circumstances alleged in the claims anywhere in the Agreement.

In Carrier's rebuttal Submission we find the following statement: "The Organization is progressing claims to your Board that are identical to those decided by Special Board of Adjustment No. 421 . . ." Special Board No. 421 met on this property and produced, among others, Award 9; the Opinion is brief and will be repeated here:

OPINION OF THE BOARD

"The evidence established that the Agreement violations charged in each of the instances cited above did, in fact, occur. Part 1 of each of the foregoing cases must be sustained. In view of the special circumstances involved in all of these cases, however, the compensation requested for each instance will be denied. Award sustained in part and denied in part as stated in the above Opinion of the Board."

This award was in conformance with an earlier award on this property. Special Board of Adjustment No. 259, Award No. 27 which, after citing Article 22(a) which provides that "no employe other than covered by the Telegraphers' Agreement and train dispatchers will be permitted to handle train orders," found that an employe covered by the Telegraphers' Agreement should have been used to handle the train order where an extra employe could have been used to perform the work. Award 4882 (Carter) on this property is in conformance with these subsequent Awards.

It, therefore, appears, regardless of what may be the rule or practice on other properties, that on this property the handling of train orders under the circumstances here involved by the train service employes is violative of the Agreement. A precedent has been established on this property. (See Award 6809, Robertson.)

Carrier further contends that, notwithstanding, no compensation should be allowed because there is no provision for it in the Agreement. Carrier claims in support of this contention, in part, that in the thirteen claims under consideration in Special Board of Adjustment No. 421, Award 9 no compensation was allowed and part 2 of each of the claims requesting compensation was disallowed. In the award it is stated: "In view of the Special circumstances involved in all of these cases, however, the compensation for each instance will be denied." Nothing further was said about this. The reasons for arriving at such conclusion are not discussed in the Opinion. Any attempted explanation on our part as to why such a conclusion was reached would be purely a matter of speculation and conjecture.

It is significant, however, that in Special Board of Adjustment 259, Award 27, heretofore referred to, compensation was allowed Claimant for a days pay for work denied and that in Award 4882 herein cited the compensation allowed Claimant was "a day's pay at the minimum rate in effect for the work denied him." From the Opinion, and language used therein, in Special Board of Adjustment No. 421, Award 9 we have no right to conclude that it was their intention to overrule these two prior awards. If such was the intention of the Board they should have said so.

There are a number of awards on other properties involving similar circumstances where claims were allowed for similar compensations as requested in the instant claims. Many of these awards have cited Award 1220, Tipton in support of the conclusions reached. In that award as here it was contended that there was no penalty provided for in the Telegraphers' Agreement. It was there said: "By the terms of the agreement, the senior, extra idle employe has acquired seniority rights; these rights entitle him to perform the work in question on that day. He should be compensated for his availability the same as though he had performed the work; it is not a question of a penalty but merely carrying out of the contract. He is, therefore, entitled to a day's pay." Compensation requests similar to those contained in and allowed in the awards cited here on this property have been allowed in the following Awards (not on this property): Award 5086, Carter; Award 5122, Carter; Award 5133, Coffey; Award 5992, Jasper; Award 6809, Robertson; Award 6678, Bakke; Award 9221, Hornbeck; Award 11617, Coburn.

There having been two prior awards on this property awarding as damages, or compensation, a day's pay under circumstances similar to those involved herein, and not having been overruled by any subsequent award we are forced to a conclusion that these claims must be allowed in toto. In view of the number of similar results reached in awards on other properties; we do not feel the Board would be justified in finding that the two awards cited on this property were palpably erroneous.

PART 3.

That brings us to a consideration of the claims involving an operation under Form M and clearance, Numbered 1, 9, 20 and 21. Claims 20 and 9 (items 1 and 2) have already been disposed of. Claims of this nature were not under consideration in Special Board of Adjustment 421, Award 9, nor in Special Board of Adjustment 259, Award 27.

In an interpretation of the Board of Arbitration, National Mediation Board, Case No. A2625, Arb. 106, it was stated in part:

"In making that statement the Board found that the record did not warrant the awarding of a rule which would require the Carrier to have a telegrapher on hand at outlying points where the need might arise to 'handle' a Form M, which would result in the Carrier's being imposed with a penalty for merely a few minutes of work in the 'handling.'

* * * * *

When, however, a motor car operator at a location where no telegrapher is employed telephones to a distant telegrapher that he has cleared the track by taking a car off, or that he wants permission to use a track, and he copies or fills in a Form M, this is permissible in connection with such telephone conversation, and should not subject the carrier to a penalty. Without attempting to define a train order, the Board intended that Form M could be used in this manner."

The conclusion arrived at in this interpretation was followed on this property in Award 4967, Carter, wherein it is stated in part:

"Certainly the Carrier is not required to assign a telegrapher at every outlying point or to have a telegrapher in proximity to every track motor car. But on the other hand the use of a telephone by a section foreman in obtaining a line-up or movement order from a dispatcher is in lieu of work which a telegrapher historically and traditionally performed. See Award 4516. The section foreman could have called the telegrapher at Chatham and obtained his information without penalty accruing to the Carrier if a telegrapher was on duty at that point. This is so because his telephone conversation with the telegrapher at Chatham would have been in lieu of a trip or messenger and would not infringe upon the work traditionally and historically performed by telegraphers."

It would appear from the record in this matter that what is described in the foregoing Arbitration Interpretation was in truth and fact what occurred here as the conversations between the train crews and the dispatcher were conducted through a telegrapher at another station. For this reason these claims will be disallowed.

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

The Agreement has been violated as indicated in the Opinion.

AWARD

Claims sustained in Claims Numbered 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26 and 27.

Claims Numbered 1, 9, 20 and 21 are disallowed in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1966.