



Award No. 15717
Docket No. TE-14611

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Don Harr, Referee

PARTIES TO DISPUTE:

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

THE AKRON, CANTON & YOUNGSTOWN
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Akron, Canton & Youngstown Railroad, that:

CLAIM NO. 1

Carrier pay O. R. Keister a two-hour call account of violation at Medina, Ohio on March 1, 1963, when train orders Nos. 39 and 40 and Clearance Form A were handled (received, copied and delivered) by Conductor Johnson, an employe not covered by said agreement, when claimant was off duty as prescribed by Rules 1, 13 and 20 of said agreement.

CLAIM NO. 2

Carrier pay W. J. Breyley a two-hour call account violation at Plymouth, Ohio on April 13, 1963, when an employe having no rights under said agreement was required or permitted to handle (receive, copy and deliver) a train order direct from the train dispatcher over the telephone when claimant was off duty as prescribed by Rules 1, 12 and 30 of said agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement by and between the Akron, Canton & Youngstown Railroad Company, hereinafter referred to as Carrier, and The Order of Railroad Telegraphers, hereinafter referred to as Organization or Employes, effective May 1, 1955, and as amended. Copies of said agreement are, as required by law, assumed to be on file with this Board and are, by this reference, made a part hereof.

The two (2) claims incorporated in this appeal were handled separately on the property. The National Agreement of August 21, 1954, Article V, sets out the procedures and time limitations for the presentation and the processing of claims and grievances. There is nothing in this agreement which prohibits the Organization from merging claims between the same parties, arising out of the same agreement and involving the same issues, providing each of the claims is presented within the time limits prescribed by said agreement, and providing

"Claimant, through his own nonfeasance, failed to comply with the operating rule."

OPINION OF BOARD: We have before us two claims that were handled separately on the property but consolidated on appeal. Both claims arose when persons not covered by the Telegraphers' Agreement handled train orders at agencies where telegraphers were employed but not on duty. The applicable Rule of the Agreement is Rule 20.

Rule 20 reads:

TRAIN ORDERS - HANDLING

"No employe other than covered by this agreement and train dispatchers will be permitted to handle train orders or other instructions affecting the movement of trains, motor cars or other traffic at stations or offices where an operator is available, except in an emergency, in which case the operator will be entitled to a call at overtime rate of time and one-half time."

There are several reasons raised in Carrier's submission for denying the claims. The only reason given by Carrier during the handling on the property was that the Claimants were not available. Neither of the Claimants resided in the town where the respective agencies were located.

Carrier does not dispute the fact that it made no effort to call the Claimants. Neither has Carrier shown that an emergency existed on the two occasions in question.

In Award 11464 (Rose) we stated:

"The Carrier's second defense is to the effect that Claimants were not available on the two occasions at issue. However, the record does not show that the Carrier made any effort whatsoever to ascertain whether or not Claimants were readily available to accept a call and perform the work within the time limits involved. Normally the Division has accepted unavailability as a defense only after the Carrier made a reasonable effort to ascertain if the employe entitled to a call was in fact available. No such effort was made here. Under the circumstances revealed in this record, and in view of the requirements of Article 23(a) we have no alternative but to sustain the claim. Awards 1096, 3880 and 4200."

The facts in Award 11464 are similar to the facts before us in these claims. The Claimant in Award 11464 lived 22 miles from the town where the agency was located.

We will sustain the claim.

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 violated.

AWARD

Claim sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

**ATTEST: S. H. Schulty
Executive Secretary**

Dated at Chicago, Illinois, this 30th day of June 1967.