

Award No. 15730
Docket No. TE-14620

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, 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 and Youngstown Railroad Company, that:

1. Carrier violated the terms of an Agreement between the parties hereto when on November 24, 1962 at New Washington, Ohio it permitted or required an employe not covered by said Agreement to copy a lineup of trains over the telephone from the dispatcher.

2. Carrier shall, because of the violation set out in paragraph one hereof, pay W. J. Breyley a two hour call in accordance with the provisions of Rule 13 of the parties' Agreement.

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

By Memorandum of Understanding, copy attached as ORT Exhibit 1, the parties agreed effective February 1, 1959, under the conditions set out in the Memorandum, to combine the agent-operator's position at New Washington and Plymouth, Ohio. Thereafter the occupant of the combined agent-operator's position would divide his time between the two positions (stations).

W. J. Breyley, hereinafter referred to as Claimant, was, on the date involved in this claim, the regular occupant of the agent-operator's position at New Washington-Plymouth, Ohio. As such, his assigned hours were 8:00 A. M. to 5:00 P. M., one hour meal period; work week Monday through Friday, rest days Saturday and Sunday.

The record shows that Claimant resided at Sycamore, Ohio, which is seventeen miles west of New Washington.

The record also shows that Claimant has a telephone and that the Carrier has the number. Also, that Carrier has, on a number of occasions, called Claimant out to perform service outside of his assigned hours for which he was paid on a call basis.

At or about 5:45 A. M., November 24, 1962, Lineman Teal came in on the telephone at New Washington at a time when Claimant was not on duty, but available for call and copied the following lineup direct from the train dispatcher:

"No. 91 by GN 5:13 A. M.

No. 97 on duty 6:30 A. M., leave Hiles about 10:30 A. M.

/s/ M. F., 5:45 A. M."

As a result of the above impingement on his work rights, Claimant filed a daily time report in which he claimed a call. Copy attached as ORT Exhibit 2.

Carrier's Chief Dispatcher with whom the claim was filed by letter dated December 4, 1962, copy attached as ORT Exhibit 3, disallowed the claim on the ground that:

"In my opinion there are no provisions in the agreement covering the payment of such a claim as this * * *."

The unadjusted dispute was thereafter appealed in the manner prescribed by the Time Limit Rule up to and including the Carrier's highest officer designated to handle claims and grievances and denied. Copies of all relevant correspondence exchanged between the parties during the handling of this dispute on the property are attached hereto and made a part hereof as ORT Exhibits 1 through 14.

The foregoing factual chronology attests that the subject matter of dispute has been handled on the property in the manner prescribed by Circular No. 1 of this Board and the relevant provisions of the Railway Labor Act, amended, but failed of settlement. The unadjusted dispute is, therefore, appealed to your Honorable Board for adjudication.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: On November 24, 1962 due to dispatcher's telephone line failing, it was necessary to call out lineman to repair. Upon his arrival at headquarters at New Washington, Ohio, he contacted the dispatcher and was advised of train locations. This was not a motor car lineup of record, but merely information.

Trains on Carrier's property are operated by train order, manual block and related train rules.

New Washington is a day train order office with hours from 7:30 A. M. to 3:30 P. M., daily except Saturday, Sunday and holidays.

Mr. Breyley resides approximately 17 miles west of New Washington, Ohio.

OPINION OF BOARD: This claim arose when a lineman not covered by the Agreement between the parties copied a train lineup directly from a train

dispatcher at a time when Claimant was not on duty but allegedly available for call under the provisions of Rule 20 of said Agreement, which reads as follows:

"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."

Employes properly contend that copying and receiving lineups of motor cars constitute work covered by Rule 20 of the applicable Agreement because such lineups affect the movement of motor cars. Hence, Carrier violated the Agreement when it allowed a lineman to perform the disputed work if a covered employe was available to perform such work.

Carrier contends that Claimant was not available for a call because he resides seventeen miles away from the town where his station is located. However, Carrier made no effort to contact him concerning his availability and has offered no evidence that an emergency situation existed. This issue was recently resolved in our Award 15717, which arose out of a similar dispute between the same parties. Accordingly, we find Award 15717 controlling in the instant dispute and the claim will be sustained.

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 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 14th day of July 1967.

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