

Award No. 15807
Docket No. TE-14802

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on The Gulf, Colorado and Santa Fe Railway Company, that:

1. The Carrier violated the Agreement between the parties when it required or permitted an employe not covered thereunder to handle a train order at Cleveland, Texas on January 24, 1963.

2. For this violation, Carrier shall be required to pay Claimant R. L. Sapp, the agent-telegrapher assigned at Cleveland, Texas on January 24, 1963, a call payment (three pro rata hours) under Article XIII of the Agreement.

EMPLOYEES' STATEMENT OF FACTS: There is in effect an Agreement between the parties bearing effective date of June 1, 1951, and by reference thereto it is made a part of this dispute.

There exists at Cleveland, Texas, on Carrier's Southern Division a one-man agency, the occupant thereof being an employe covered by the Telegraphers' Agreement.

On January 24, 1963, Conductor Blanchette copied Train Order No. 18, completed at 12:36 A.M., outside the assigned hours of Agent Telegrapher R. L. Sapp. This order read as follows:

"Jan. 24, 1963 Train Order No. 18

To C&E Extra 2722 North

At Cleveland

Order No. 125 of Jan. 23 is annulled.

Extra 2722 North has right over Extra 2702 South Silsbee to Conroe.

Dear Sir:

This will acknowledge your letter, December 18, 1963, wherein you have reaffirmed your decision of July 10, 1963, declining claim in behalf of Agent-Telegrapher R. L. Sapp, Cleveland, Texas, January 24, 1963, for a call payment account Conductor Blanchette copying a train order thereat while the agent was off duty.

This is to advise your decision is not satisfactory, and the dispute will be appropriately appealed to the Third Division for adjudication.

The facts are not in dispute. Superintendent Baker has stated that:

'Since it was an emergency, it was necessary to instruct conductor of train handling due to drawbar being pulled out Train 239.'

No effort was made to contact the agent, regardless of his location; however, Article XIII, Section 1, provides for payment of a call when train orders are copied in an emergency at an office where a telegraph service employe is employed but not on duty.

Your attention is also directed to Award 11921, Third Division, sustaining a similar claim involving a similar rule, wherein the Referee stated:

'It's quid pro quo is "in which case the telegrapher will be paid for the call." * * * Claim sustained.'

Yours truly,

/s/ R. O. Norton
General Chairman"

OPINION OF BOARD: This claim presents the question of whether or not an operator is entitled to pay for a call where he is unavailable and an emergency exists.

Article XIII, Section 1, of the Agreement reads, in part, as follows:

"... no employe other than covered by this Agreement and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call."

It is manifestly clear that in the event of an emergency it matters not whether the operator is or is not available. No doubt, the parties recognized that availability was not important since the operator would most likely not be called in an emergency. Regardless, the Claimant is entitled to a call payment under his claim. See Award 11921 (Seff).

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 Carrier violated the Agreement.

AWARD

Claim sustained.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September 1967.