

Award No. 17042

Docket No. TE-16387

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Missouri-Kansas-Texas Railroad Company, that:

CLAIM NO. 1

1. Carrier violated the Agreement between the parties on May 1, 21, and 29, 1965 when trainmen handled train orders at Chetopa, Kansas, at times when the Agent-Telegrapher was not on duty but available for such service.

2. Carrier shall compensate Jim Cross, Agent-Telegrapher, Chetopa, Kansas, for a two-hour call at the time and one-half rate for each of these violations.

CLAIM NO. 2

1. Carrier violated the Agreement between the parties on September 8 and 18, 1965, and October 10, 1965 when trainmen handled train orders at Chetopa, Kansas, at times when the Agent-Telegrapher was not on duty but available for such service.

2. Carrier shall compensate Jim Cross, Agent-Telegrapher, Chetopa, Kansas, for a two-hour call at the time and one-half rate for each of these violations.

CLAIM NO. 3

1. Carrier violated the Agreement between the parties on December 1, 1965, when trainman handled train order at Appleton City, Missouri, at a time when the Agent-Telegrapher was not on duty but available for such service.

2. Carrier shall compensate D. M. Radford, Agent-Telegrapher, Appleton City, Missouri, for a two-hour call at the time and one-half rate for such violation.

CLAIM NO. 4

1. Carrier violated the Agreement between the parties on December 4, 1965, when trainman handled train order at Montrose, Missouri, at a time when the Agent-Telegrapher was not on duty but available for such service.

2. Carrier shall compensate F. C. Cook, Agent-Telegrapher, Montrose, Missouri, for a two-hour call at the time and one-half rate for such violation.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties was effective as to rules on September 1, 1949 and as to rates of pay on February 1, 1951. Copy of the Agreement is available to your Board and by this reference is made a part of this submission.

The claims involved in this dispute were handled in the usual manner on the property. Claim No. 1 was discussed in conference on August 31, 1965. The other three were discussed in conference on March 8, 1966. All four present an identical issue; i.e., whether the Claimant were available, within the concepts of the pertinent Agreement rules, to perform the work in dispute.

CLAIM NO. 1

Claimant as the Agent-Telegrapher at Chetopa, Kansas, was on the dates of this claim the only employe covered by the Agreement at that station. His assignment extended from 8:30 A. M. until 5:30 P. M., daily except Saturdays and Sundays. He resided at Oswego, Kansas, which, according to Carrier's time table, is 9.3 rail miles north of Chetopa. His residence, according to the record of this dispute, is 7.8 highway miles from the Chetopa station where he works.

Other facts are revealed in the correspondence exchanged by the parties during the handling of this claim on the property, which correspondence is appended hereto at TCU Exhibit No. 1. Included with this correspondence, as the final page of Exhibit No. 1, is a document dated September 22, 1965, which the Claimant signed to confirm statements he had made to the General Chairman and which the General Chairman had, in turn, made to Carrier's Vice President-Personnel with regard to payments made for previous similar claims. This page is similarly relevant to Claim No. 2.

CLAIM NO. 2

This claim involves essentially the same circumstances as those involved in Claim No. 1, except that the incidents occurred on three later dates. Three other items of difference may be noted, but they do not affect the merits of the claim.

One is the fact that the dates of September 18 and October 10, 1965, were assigned rest days of the Claimant and the disputed work occurred within the hours of his regular week day assignment. For Sunday, October 10, 1965, he should have claimed three hours' pay, rather than two hours, at the time and one-half rate. This is not to say that Employees are now attempting to change or expand the claim, but to point out that the compensatory damages due the Claimant are no less than those claimed.

The second item of difference may be noted in the correspondence appended hereto in connection with Claim No. 2. The General Superintendent's letter of December 6, 1965, belatedly denying the compensation claimed for

September 8, 1965, stated that the Claimant lives at Chetopa, where the disputed work occurred. That statement is undoubtedly an inadvertent error, as the parties were otherwise agreed that he then lived at Oswega, Kansas, 7.8 highway miles from Chetopa.

The third item of difference is with respect to the date of September 18, 1965. The record reveals that Claimant, twenty minutes prior to the time the train order in question was copied, had been in the station conversing with the dispatcher. Nevertheless, Employees contend that this item offers no material difference in the circumstances.

Correspondence exchanged by the parties during the handling of this claim on the property is appended hereto as TCU Exhibit No. 2.

CLAIM NO. 3

Claimant here is the Agent-Telegrapher at Appleton City, Missouri, the only employe covered by the Agreement at that station. His assignment was 7:45 A. M. until 4:45 P. M., daily except Saturdays and Sundays. He resided at Butler, Missouri, about 15 highway miles from Appleton City.

Other facts are revealed in the correspondence exchanged by the parties during the handling of this claim on the property, which correspondence is appended hereto as TCU Exhibit No. 3. (The final letter of the exchange, however, is omitted here. The General Chairman's letter of March 29, 1966, was applicable to Claims 2, 3 and 4 alike. Copy is reproduced for Exhibit No. 2 but omitted from Exhibits No. 3 and No. 4.)

CLAIM NO. 4

Claimant here is the Agent-Telegrapher at Montrose, Missouri, the only employe covered by the Agreement at that station. His assignment was 6:30 P. M. until 3:30 A. M., daily except Saturdays and Sundays. He resided at Appleton City, Missouri, 5.5 rail miles from Montrose.

Other facts are revealed in the correspondence exchanged by the parties in connection with this dispute, which correspondence is appended hereto as TCU Exhibit No. 4. (As noted above, the General Chairman's letter of March 29, 1966, is omitted here.)

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS:

(1) Agent-telegrapher Jim Cross, Chetopa, Kansas, assigned hours 8:30 A. M. to 5:30 P. M., one hour for lunch, Monday through Friday, rest days Saturday and Sunday, lives in Oswego, Kansas, about eight (8) highway miles from Chetopa. He claimed minimum two hour call account not called when member of train crew copied train orders at Chetopa while the telegraph office was closed and claimant was not available for service claimed as follows:

May 1, 1965 (Sat) 11:55 P. M. Extra 67C North, Order No. 181

May 21, 1965 (Fri) 12:47 A. M. Extra 73A North, Orders Nos. 7 and 8

May 29, 1965 (Sat) 12:06 A. M. Extra 141 North, Order No. 1

(2) Agent-telegrapher Jim Cross, Chetopa, Kansas, also claimed minimum two hour call account not called when member of train crew copied train

orders at Chetopa while that telegraph office was closed and claimant was not available for service claimed as follows:

September 8, 1965 (Wed) 6:20 A. M. Extra 126 North, Order No. 60

September 18, 1965 (Sat) 12:01 P. M. Extra 146 North, Order No. 72

October 10, 1965 (Sun) 11:53 A. M. Extra 135 North, Order No. 63

(3) Agent-telegrapher D. M. Radford, Appleton City, Missouri, assigned hours 7:45 A. M. to 4:45 P. M., one hour for lunch, lives on a farm 14½ miles west of Appleton City and claimed minimum two hour call account not called when member of train crew on Extra 114 North copied train Order No. 131 at 8:01 P. M., Wednesday, December 1, 1965, while that telegraph office was closed and claimant was not available for service claimed.

(4) Agent-telegrapher F. C. Cook, Montrose, Missouri, assigned hours 6:30 P. M. to 3:30 A. M., one hour for lunch, Monday through Friday, lives 7½ miles from Montrose and claimed minimum two-hour call account not called when member of train crew on Extra 126 North copied train order No. 535 at 6:12 P. M., Saturday, December 4, 1965, while that telegraph office was closed and claimant was not available for service claimed.

Copy of correspondence exchanged by the parties in handling these claims is attached as Carrier's Exhibit A, B, C and D.

(Exhibits not reproduced.)

OPINION OF BOARD: Four separate claims have been consolidated in this one docket. Each of these Claims propound the same issue as contained in Award No. 17041. Therefore, each of the claims contained herein will be sustained for the same reasons as outlined in said Award No. 17041.

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

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March 1969.

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