

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21680  
Docket Number CL-21537

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and  
( Steamship Clerks, Freight Handlers,  
( Express and Station Employees  
(  
(Seaboard Coast Line Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood,  
GL-8036, that:

1. Carrier violated the agreement between the parties hereto, when and because on July 12, 1974, it required or permitted Supervisory Agent J. H. Henderson at Ahoskie, N. C. to copy train orders for Work Extra 720 of July 14, 1974, and place them in a bill box to be picked up by a crew member of Work Extra 720 on July 14, 1974.

2. Carrier shall be required to compensate J. H. Henderson for a call, 2 hours at one and one-half times the hourly rate of his assignment on July 14, 1974, for the above violation.

OPINION OF BOARD: Claimant herein was the regularly assigned Supervisory Agent at Ahoskie, North Carolina on the day in question, with a Monday through Friday regular week (Saturday and Sunday as rest days). On Friday, July 12, 1974, the Chief Dispatcher told Claimant that it would be necessary to issue orders for a Work Extra for the early morning of Sunday, July 14th. Claimant advised the Chief Dispatcher that he would not be available to make such a call; he was instructed to copy Train Order 531 and place that order and other earlier orders together with the Clearance Card in a bill box outside of the station to be picked up by the train crew on July 14th. On July 14 the clerk on duty called Claimant and asked him to take the call, which he refused to do again. The orders were picked up by the crew on the Sunday in question. Subsequently this claim was filed requesting a two-hour call for Claimant.

Rule 24 (a) provides:

"(a) No employee other than covered by this schedule 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

"operator will be paid for the call. At offices where two or more shifts are worked, the operator whose tour of duty is nearest the time such orders were handled will be entitled to the call."

This is one of a long series of disputes involving the question of whether or not personal delivery of a train order is a requisite for a call under train order rules. The parties argued vigorously on that issue during the handling of this dispute, citing many previous awards dealing with that problem. However, this case must be dealt with on a much more fundamental basis: the availability of Claimant. That problem precedes the more complex question of the method of handling train orders.

The evidence herein is unequivocal that Claimant told the Chief Dispatcher on Friday that he would not be available for a call on Sunday. This was affirmed by the second, unnecessary, call to him on Sunday by the clerk on duty. Thus his unavailability for the work in question is clear.

It is long and well established that a Carrier may not be penalized by a call payment when the employee on whose behalf the Claim is made is not available. For example, in Award 13934, this Board held:

"The record before us compels the conclusion that Claimant Brown could not be promptly located, and was not available when the train order was handled by a train service employee. Therefore, his claim must fail."

We held similarly in Award 11498 involving these same parties. In this dispute, without considering the issue of the personal delivery of the train orders, the Claimant was simply not available for the call and hence it is not necessary to deal with any other issue. It is an essential ingredient that an employee be available for service in order to prevail in a monetary claim in which he alleges that he was not afforded the opportunity to perform such service. The claim, therefore, must fail.

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;

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That this Division of the Adjustment Board has jurisdiction  
over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Paulos

Dated at Chicago, Illinois, this 31st day of August 1977.