

SPECIAL BOARD OF ADJUSTMENT NO. 186

AWARD NO. 5

Organization's File

C-873

Carrier's File

TE-7-55

STATEMENT OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on The Denver and Rio Grande Western Railroad:

"(1) The Carrier violated the provisions of the current agreement when it failed and refused to compensate Agent-Telegrapher G. F. Womack, who was held to be available for a call or calls on each Saturday, Sunday and holiday commencing February 19, 1955 and continuing until the practice is discontinued account being held available for work by instructions of Chief Dispatcher Egley; and

"(2) That Agent-Telegrapher G. F. Womack shall now be compensated the difference between compensation allowed (one call each Saturday, Sunday and holiday) and continuous time at the rate of time and one-half from 12:01 a.m., each Saturday, Sunday and holiday until released."

FINDINGS: Claimant was regularly assigned as Agent-Telegrapher at LaVeta with tour of duty from 6 AM to 3 PM Monday thru Friday. There were no time carded trains thru LaVeta. On all days except Tuesday one train only went thru there: No. 67 arriving sometime late in the afternoon on Saturdays, and No. 68 arriving sometime in the early morning on Sundays.

On each Friday, Claimant received copy of instruction addressed to "All, LaVeta, Colorado" which, so far as it concerned him said:

"NO 67 S 630 PM TOMORROW
RUN CONNECTION DIESEL 2050 ADJUSTED TONS FAC 6

NO 68 T 6 AM SUNDAY DIESEL THRU
RUN CONNECTION PICK UP EAST BUSINESS AT LA VETA AND WALSENBURG

AGENT WILL RECEIVE CALL TO CLEAR NO. 67 S AND NO 68 T AND WILL BE CALLED BY DISPATCHER THRU MECHANICAL PEOPLE TO TIME WANTED TO REPORT TO CLEAR ABOVE TRAIN S"

Award No. 5 (Continued)

Claimant insists that such instruction held him on duty on Saturdays, Sunday and holidays until such time as the train should arrive and he issue necessary clearance for it. Consequently this claim was filed for the time from 12:01 AM until released on each of such days that he considered himself so held for service.

On March 12, 1954, claimant wrote the Assistant Superintendent referring to instruction received by him not to show any time on his time cards except for that for which he had actually been called and saying "I feel that when the chief dispatcher instructs me to be available for a call with no time specified to make the call, he is putting me on duty and I will claim time accordingly." On the same date, he wrote the trainmaster acknowledging receipt of instruction that he would not be held responsible if he was not available for calls on Sunday unless he was notified by the dispatcher to be available and added: "Please understand that I am willing and ready to protect any calls when necessary to do so; but I feel that when the chief dispatcher instructs me to be available, he is thereby putting me on duty and I will claim time accordingly until released."

We cannot agree with the contention of Carrier that an employe is entitled to receive compensation only in case he actually performs service or work. If claimant was held subject to call in the sense he was obligated to remain continuously available to respond to call and be subject to discipline if he did not respond to such call, then claim should be sustained for such time as he was required to be available.

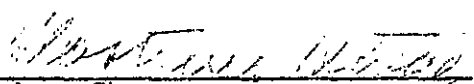
On the contrary, if the notice of which claimant received a copy advising him that he would receive a call to clear the train both on Saturday

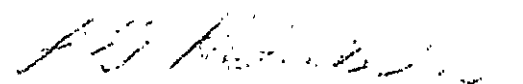
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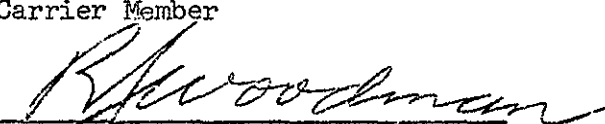
and Sunday was not understood to hold claimant obligated to remain available but only to require him to respond in case he was available upon receiving the call thru the mechanical people stating the time that he was to work, then he was entitled to pay only under the Call Rule and this amount he has received.

Claimant in his letter to the trainmaster admitted that he had received instruction that he would not be held responsible if he was not available for calls on Sunday unless notified by the dispatcher to be available. Notice to him that he would receive a call at an indefinite time did not on its face constitute an instruction to continue to be available for such call and there is no showing that it was so construed on the property. We are further persuaded that Claimant did not consider himself obligated to remain available by the fact that no claim was submitted under the contention now made until April 28, 1955, following the issuance of timetable showing trains Nos. 67 and 68 as time-carded trains with No. 67 superior so that no clearance was required at LaVeta.

AWARD: Claim denied.


Mortimer Stone
Chairman, Neutral Member


L. G. Heinlein
Carrier Member


R. J. Woodman
Organization Member

Dated at Denver, Colorado, August 30, 1957.