

Award No. 6361

Docket No. TE-6442

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackawanna & Western Railroad, that:

(a) the Carrier violated the terms of the schedule agreement between the parties when and because at 11:34 P. M., December 13, 1950, it required or permitted Conductor Hance, Extra 1648 East to copy train order No. 112 at New Village, New Jersey;

(b) the Carrier further violated the terms of said agreement (Article 33-(d)) when it failed to notify the representatives of the Organization of its decision in the matter within the time specified for rendering such decision;

(c) in consequence of these violations the Carrier shall compensate the senior employe under the agreement idle on December 13, 1950, in an amount equal to a day's pay at the prescribed rate; the identity of the individual entitled to receive payment to be determined by a joint check of Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the parties bearing an effective date of November 1, 1947, is in evidence.

New Village, New Jersey, formerly an open telegraph station, the incumbent of which being represented by the Organization, was at the time of this violation a closed station under the jurisdiction of Washington, N. J.

At 11:34 P. M., December 13, 1950, Conductor Hance, in charge of Extra 1648 East was required or permitted to copy train order No. 112 at New Village. The order read as follows:

The position of Agent at New Village, N. J. was abolished on February 15, 1943 and all matters at New Village were placed under the jurisdiction of the Agent-Operator at Washington, N. J.

Article 3—Train Orders—Telegraphers Agreement reads:

"No employe 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 telegrapher will be paid for the call."

POSITION OF CARRIER: The Carrier does not admit the allegations in part (a) of the claim. However, the merits under part (a) are not involved because the Carrier admits that it failed to notify the representative of the organization within the specified time under part (b) of the claim.

The Carrier made a check to develop the name of the senior ORT employe idle on December 13, 1950 who was entitled to payment under this claim by reason of the Carrier's oversight in not rendering a timely decision. This check developed that Operator Ruff was the only such ORT employe available on December 13, 1950 and without prejudice to our position in the matter, payment of one day's pay to Operator R. W. Ruff was authorized on September 18, 1952. Therefore, there is no merit to the claim.

The claim has been the subject of correspondence with the employes on the property.

OPINION OF BOARD: This claim is divided by the Organization into three sections, (a), (b), and (c), and our comment will follow under each section separately.

(a) Claim is made that Carrier violated the Agreement between the parties when it required a conductor, not covered by the Telegraphers' Agreement, to copy train order 112, at New Village, New Jersey, on December 13, 1950. Carrier admits the violation as alleged, has never made any denial, and has made an effort to dispose of the claim with the Organization.

(b) The Organization contends a violation of Article 33 (d), by Carrier, by its failure to notify the representative of the Organization of its decision within the time specified for rendering decision as above provided, which is:

"Claims denied will be considered invalid unless appealed within sixty (60) days from the date on which the claim was denied. When a decision is appealed the representative will be notified in writing of the decision within sixty (60) days from the date the decision was appealed. If not so notified, the claim will be allowed. Such allowance does not constitute a precedent on any question of rule interpretation or application."

The record clearly shows claim was filed by the Organization January 21, 1951, within the ninety-day (90) time limit required by Article 33 (a) for filing of time claims. The claim was declined March 14, 1951. March 23, 1951, claim was appealed to the Assistant General Manager, and it was not until June 5, 1951, Carrier notified the General Chairman of its decision on the appeal. This was approximately seventy-four days after the date the appeal was lodged. Carrier in this letter admitted its failure to render decision as provided by Article 33 (d) of the Agreement. The record does show Carrier declined the claim on the premise that no specifically named employe was designated in the claim, and Carrier was in no position to make any settlement, and declined a joint check of their records, as requested in the claim. Carrier further admits in the record, that it checked its records, and determined that Operator R. W. Ruff was the only available employe entitled to the monetary claim, and on September 18, 1952,

so authorized and paid the claim to Ruff. Since Carrier has admitted its failure to make its decision within sixty (60) days as required by the Agreement, this portion of the claim should be sustained.

(c) This portion of the claim is for a day's pay for the senior employe idle on December 13, 1950, and further states the identity of the employe to be determined by a joint check of Carrier's records. Carrier has refused the Organization to make such joint check with it, and instead made payment to an employe it states the records disclose would be entitled to such payment. This Board is of the opinion that Carrier has failed to comply with the provisions of Article 33 (d) of the Agreement in that, through its failure to make its decision as provided, the claim will be allowed. There is no ambiguity in the wording of the claim, in its request for a joint check of the records. Nor is there any ambiguity in the wording of Article 33 (c). It means exactly what it says, "**claim will be allowed.**" It is true Carrier tendered the Organization payment of the claim, before the appeal was filed, and that it has since paid an employe the amount as claimed, but the Organization objects to Carrier's procedure since it refuses to abide by the wording of the claim, to allow a joint check of the records. Carrier has violated the Agreement as alleged, and since the claim, section (c) requests a joint check of Carrier's records, we are of the opinion claim should be sustained in its entirety, except Operator Ruff having been paid, would not be further entitled to consideration.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Carrier has violated the provisions of the Agreement.

AWARD

Claim sustained, and a joint check of Carrier's records be made to determine the proper employe entitled to receive payment of such claim, in accordance with the foregoing Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 2nd day of October, 1953.