

Award No. 4142
Docket No. 4140
2-ACL-EW-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Electrical Workers)**

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Current Agreement was violated when Western Union Telegraph forces performed work of Atlantic Coast Line Telephone Maintainers on the dates Sept. 17 and 18, 1960.

2. That accordingly, the Atlantic Coast Line Railroad be ordered to additionally compensate Telephone Maintainers J. F. Speight, W. R. Keel, W. H. Jackson, G. T. Langston, N. S. Howell, J. B. Messer and J. Leffler that had been assigned to this particular work 25 hours each at time and one-half, which is equal to the number of hours worked by the Western Union Telegraph' forces.

EMPLOYEES' STATEMENT OF FACTS: The Atlantic Coast Line Railroad Company, hereinafter referred to as the carrier, employs telephone maintainers that are regularly assigned to inspect, install, construct, maintain and repair telephone equipment on the Atlantic Coast Line Railroad. On September 12, 1960, a hurricane referred to as "DONNA," struck an area containing telephone circuits and equipment, assigned to, and maintained by Atlantic Coast Line telephone maintainers. Doing considerable damage to telephone circuits and equipment, carrier maintainers J. F. Speight, W. R. Keel, W. H. Jackson, G. T. Langston, N. S. Howell, J. B. Messer and J. Leffler, hereinafter referred to as claimants, were required to report and start repairs. After working from September 12, to September 16, inclusive, they were notified not to report for work on the dates of September 17 and 18.

Knowing Western Union Telegraph forces would be working in the damaged area on these dates, maintainer Speight notified carrier telephone supervisor, Mr. W. I. North that claim would be entered for any work performed by Western Union forces on telephone circuits or equipment assigned to Atlantic Coast Line maintainers. This dispute has been handled with all carrier officials designated to handle such disputes up to and including the

Company to repair its telephone circuits, nor is it known, except by statement of one claimant, that repairs were made to the carrier's telephone circuits. Carrier contends that if its circuits were handled, such handling was incidental to the restoration of Western Union circuits and was helpless to do otherwise. The Western Union Telegraph Company has not presented any bill for work on carrier's telephone circuits.

When pole lines are repaired, reconstructed, etc., necessitating the handling of carrier's telephone circuits, the telephone maintainers are not normally called on to handle the telephone circuits, but The Western Union Telegraph Company handles carrier's circuits and presents a bill for such handling.

Regardless of whether or not Western Union forces worked September 17 and 18, 1960, carrier's telephone circuits were not restored to service on those days. Carrier's telephone maintainers returned to work on Monday, September 19, and resumed repair work; however, the train dispatcher's telephone circuit, used for transmission of train orders, was not placed in service until 4:30 P. M., Thursday, September 22, 1960. The message (second) circuit was restored to service on or about September 29, 1960.

There is no prohibition of any kind in the agreement that abridges the right of The Western Union Telegraph Company to maintain, repair or install its own equipment on pole lines on property of this carrier.

During the course of regular maintenance of Western Union lines, construction or repair forces of that company frequently find it necessary to make adjustments, re-arrangement, patching, etc., of carrier's telephone circuits. In such cases, there has heretofore been no complaint or time claim when such work has been performed by Western Union forces during regular working hours of carrier's telephone maintainers. Indeed, it would appear carrier's telephone maintainers prefer that such work, during regular working hours, be performed by Western Union forces. It was only when carrier's telephone maintainers were not called on overtime basis to perform cleanup work on Saturday and Sunday, September 17 and 18, 1960, and some of their work was allegedly performed on those days by Western Union forces, that the instant claim and complaint arose.

Carrier feels, and requests that your Board so find, that the claim is without merit, inasmuch as there has been no proof submitted that the agreement was violated.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

A thorough, objective and trenchant review of this Docket reveals that the case was poorly prepared and processed by both parties on the property. The record contains many vague generalizations and unsupported assertions.

An accurate determination of the number of hours or the amount of time Western Union employes worked on Carrier's circuits on September 17th and 18th would be extremely difficult — if not impossible — to ascertain. Furthermore, when balancing the time claims with claimants' time and travel allowances the difference, if any, might possibly be a pittance.

The Board believes that the record does support the conclusion that the Carrier violated the Agreement. However, beyond that determination the Board will not go because there is no supportive evidence on which an actual and factual lost time claim judgment can be predicated. Carrier violated Agreement.

AWARD

Claim 1 sustained.

Claim 2 disposed of as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1963.