

Award No. 3015

Docket No. TE-3105

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Colorado and Southern Railway, that the Carrier is continuously violating the terms of the Telegraphers' Agreement at the Walsenburg, Colorado freight agency by permitting or requiring a subordinate official not under the Telegraphers' Agreement, regularly on each week day, and on Sundays when called or notified, to perform the work of the freight agent at times when the freight agent is not on duty for the purpose of evading the payment of calls and/or overtime to the freight agent; and that the freight agent shall be paid under the provisions of rules 5 (a), 5 (b) and 8 of the Telegraphers' Agreement for a call on each week day, and for a call or calls on each Sunday, since December 5, 1943, on which the freight agent has been deprived of his work by this improper use of the said subordinate official.

EMPLOYEES' STATEMENT OF FACTS: Walsenburg, Colorado, is located on the Southern Division of the Colorado and Southern Railway Company where an agent and a cashier is employed in the freight station. Said agent position is covered by the telegraphers' agreement.

In addition to the above named positions there is also the position of trainmaster or yardmaster at Walsenburg, not under the telegraphers' agreement, who, in addition to his duties as such, is required by the Carrier to also render passing reports, red ball reports, seal record reports, perishable reports, checks heaters and ventilators, bills freight, handles shippers order bills of lading, seals cars, delivers freight, collects charges for freight, bills live stock, issues live stock contracts, handles car orders, and, in fact, by his own statement, performs any work that is to be done in or about the freight depot, during the period of time the agent is not on duty but is available for call.

POSITION OF EMPLOYEES: As a result of the infringements upon our rights and the rights of other crafts by Mr. C. F. Hindes, who is sometimes called Trainmaster and sometimes Yardmaster by the management, a joint check of the situation was made by the general chairmen of The Order of Railroad Telegraphers, the Brotherhood of Railway Clerks and the Maintenance of Way Employees, under date of December 22, 1943, whereupon it was found that Mr. Hindes was performing all of the duties enumerated in our above Statement of Facts in addition to other duties with which we are not herein concerned. As a matter of fact, Mr. Hindes made the very positive statement to the three general chairmen that he did any work there was to be done, that being his instructions and that he would continue to do so until and unless he was otherwise instructed by the management.

As a result of this joint check and our findings, numerous conferences have been held with the management in an effort to prevail upon them to discontinue the absurdly unethical practice, and under date of July 28, 1944, while discussing this matter in joint conference, it was indicated that Mr. Hindes would be moved

POSITION OF CARRIER: The Carrier denies that it is violating the terms of the telegraphers' agreement at Walsenburg, Colorado. The Carrier is not requiring any employe other than those covered by the telegraphers' agreement to perform work covered by that agreement.

Although several conferences have been had with the General Chairman concerning this dispute, the General Chairman has never definitely set forth what work a subordinate official is performing at Walsenburg that is work covered by the telegraphers' agreement, and until such time as this has been set forth, it is difficult for the Carrier to make answer to the ex parte submission.

As previously stated, the subordinate official at Walsenburg is not and has not performed any work covered by the telegraphers' agreement, and, therefore, the claim, as contained in ex parte submission submitted by President Gardner in his letter of June 21st, should be denied.

OPINION OF BOARD: The record shows that from December 5, 1943 to July 1, 1945, work customarily performed by the Agent at Walsenburg, covered by the Telegraphers' Agreement, had been performed upon unidentified dates and occasions by the Yardmaster-Coal Traffic Solicitor outside of the Agent's regular tour of duty. The parties agree that no such work has been performed by the Yardmaster-Coal Traffic Solicitor since claimant Agent Anderson's retirement July 1, 1945.

The claim must be sustained in accordance with applicable provisions of the Telegraphers' Agreement for such dates and occasions as such work was thus performed, and the case will be remanded to the parties for determination of the necessary facts and for disposition on the property.

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 employe 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 claim in behalf of the Agent, covering the period December 5, 1943 to July 1, 1945, will be sustained in accordance with the Opinion.

AWARD

Claim sustained in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary.

Dated at Chicago, Illinois, this 7th day of December, 1945.