

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee.

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SEABOARD AIR LINE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on Seaboard Air Line Railway that E. Black, regularly assigned clerk-operator at Sarasota, Florida, shall be paid for one call each day on June 3, 10, 17 and 24, 1945, on account of employes not covered by the Telegraphers' Agreement being required or permitted to perform communication service by means of the telephone involving reports of record when operator Black was not on duty, in violation of the scope rule of said agreement; and that he shall also be paid for a call for each subsequent day on which the carrier has committed a similar violation of the Telegraphers' Agreement until this dispute is adjudicated by award.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of October 1, 1944, as to rules and working conditions is in effect between the parties to this dispute.

Operator E. Black is regularly assigned clerk-operator at Sarasota, Florida, assigned hours 8:00 A. M. to 5:00 P. M. on week-days, but no Sunday assignment. He was readily available for call on the days involved for the purpose of performing this communication service at his station, but was not called by the Carrier.

At or about 4:30 P. M. each day on June 3, 10, 17 and 24 (Sundays) 1945, employes in the Sarasota office not covered by the Telegraphers' Agreement were required to call the dispatcher over the telephone for information as to how Train No. 507 was running. Desired information was thus obtained and the passenger bulletin board was posted accordingly—that is, the time train was expected to arrive at Sarasota was recorded on the bulletin board. It is necessary to post this bulletin board each day for the information of the public, this being a requirement of the Florida Public Service Commission. Clerk-operator Black performs this work on his week-day assignment. In short, this communication service constitutes a part of Black's duties when he is assigned on week-days, but on Sundays when he is unassigned the work is performed by other employes in the office not covered by the Telegraphers' Agreement.

POSITION OF EMPLOYES: The following quoted rules of the prevailing Telegraphers' Agreement are invoked in this case of dispute:

"Rule 1—Scope:

This agreement will govern the employment and compensation of agent-telegraphers, agent-telephoners, division car-distributor-operators and report clerk-operators, telegraph and telephone

ment. The work involved being work recognized as clerks' work.

AWARDS:

1273, 1274, and 1275

Involved the matter of trainmen being required to handle mail, baggage and express which work had previously been recognized as work belonging to telegraphers.

AWARDS:

1281, 1282, 1283, and 1284

Involved the matter of section foreman copying line-ups.

AWARD 1302 Involved the matter of the railroad company requiring an operator to work at two stations.

AWARD 1305 Involved matter of a telegrapher's position being abolished and his work assigned to non-contract employe and section foreman. That claim was dismissed.

AWARD 1456 Involved handling of train orders.

AWARD 1563 Involved the matter of a maintainer copying a line-up of trains.

AWARD 1713 Involved the handling of train orders.

AWARD 1720 Involved the matter of employes not covered by the Telegraphers' Agreement copying line-up of the movement of trains.

The awards cited by the committee do not give any support whatsoever to the employes' present claim. In fact, we think that the citing of these irrelevant awards indicates definitely an admission on the part of the organization that their claim is without merit.

In the committee's appeal of the superintendent's decision, great stress was placed on the contention of the committee that the posting of the arrival time of the train on the bulletin board involved a matter "of record". As previously explained, there is no basis for the organization contending that all messages "of record" is work belonging exclusively to telegraphers and in this instance we do not see how by any stretch of the imagination the expected arrival time of the train being marked on the bulletin board with a piece of chalk could properly be termed a matter "of record".

Our position in this dispute is based entirely on the fact that we have not violated the Telegraphers' Agreement and decision should be made on that basis. However, we cannot refrain from reminding you that the management of this railroad is charged with the duty of economically operating a carrier system for the benefit of the public. If we were to allow payment of such claims as the ones involved in this dispute we could not fulfill our obligation to the public.

In consideration of the above facts and circumstances the carrier respectfully requests that the claim be declined.

OPINION OF BOARD: Operator Black is regularly assigned as a clerk-operator at Sarasota, Florida, assigned hours 8:00 A. M. to 5:00 P. M. on week days, without Sunday assignment. A part of his assigned duties is to secure information from the Dispatcher by telephone as to how Train No. 507 is running. The information thus obtained is given to a Ticket Clerk who posts it on a public bulletin board as required by a regulation of the Florida Public Service Commission. On the Sundays specified in the claim, a ticket clerk, an employe not covered by the Telegraphers' Agreement, called the Dispatcher and obtained the information and posted it on the public bulletin board. The Organization contends that this is Telegraphers' work and that

Black should have performed it and that he be compensated for so doing under the Call Rule.

The obtaining of this train information for use on the public bulletin board was regularly assigned on week days to Black, an employe under the Telegraphers' Agreement. It would follow, therefore, that if there was any Sunday work growing out of the position, it should be given to Black rather than to one working in a different craft.

The Carrier contends that it had long been the practice to permit Ticket Clerks to perform the Sunday work of this position. This can properly operate as an estoppel against claims for reparations but it cannot operate to defeat the Agreement.

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 the Agreement was violated as charged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1948.

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Interpretation No. 1 to Award No. 3900

Docket TE-3505

NAME OF ORGANIZATION: The Order of Railroad Telegraphers.

NAME OF CARRIER: Seaboard Air Line Railway.

Upon application of the representatives of the Employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m), of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The original claim as filed before this Division was as follows:

"Claim of the General Committee of The Order of Railroad Telegraphers on Seaboard Air Line Railway that E. Black, regularly assigned clerk-operator at Sarasota, Florida, shall be paid for one call each day on June 3, 10, 17 and 24, 1945, on account of employees not covered by the Telegraphers' Agreement being required or permitted to perform communication service by means of the telephone involving reports of record when operator Black was not on duty, in violation of the scope rule of said agreement; and that he shall also be paid for a call for each subsequent day on which the Carrier has committed a similar violation of the Telegraphers' Agreement until this dispute is adjudicated by award."

The award of the Division was: "Claim sustained."

It is the contention of the Carrier that the only matters adjudicated by the award were the violations occurring on June 3, 10, 17 and 24, 1945, and the Carrier has tendered reparations only for those days as a compliance with the award. The Organization contends that the award includes, in addition to the foregoing, all similar violations occurring subsequent thereto to the date of the award.

The Carrier relies upon Rule 28, current Agreement, which provides in part:

"Time claims must be presented within thirty (30) days from time cause for claim occurs."

It is urged by the Carrier that the foregoing rule precludes consideration of any subsequent claim not presented within thirty days from the time cause for claim occurs. We do not concur with this view. When a claim based on a rule violation has been timely presented and processed to this Board, similar violations on subsequent days, when included in the claim by appropriate language, are not within the purview of Rule 28. The law does not require one to do a vain thing. The Carrier having denied that a violation existed and evidenced an intent to deny such claims, no reason exists for requiring the employee to comply with Rule 28 during the period in which the issue is being determined between the parties involved under the processes

provided by the Railway Labor Act. Under such circumstances, the one notice constitutes compliance with the rule. The purpose of Rule 28 is to require that claims be promptly made and to eliminate the filing of stale claims. It was not made for the purpose of entrapping the employe by requiring an appeal to this Board for each similar violation of a rule occurring to one employe. Compliance with the rule as to the first claim relied upon is sufficient to formulate the issue as to whether a violation occurred and, if the finding is in the affirmative, to authorize the Board to require the Carrier to compensate the employe for wage losses sustained to the time the violation was corrected. Violations of rules and compensatory claims therefor, are not to be presented piecemeal by either party. It is the function of this Board to enforce the agreements and award full compensatory loss for their violations by a single award wherever it is possible to do so and the scope of the issues presented permit. The award before us for interpretation found that the Agreement had been violated and awarded compensation lost on June 3, 10, 17 and 24, 1945, and on all dates subsequent thereto on which similar violations occurred until the Agreement violation was corrected. This is in accord with the purposes of the Railway Labor Act and the general practice of this Board.

There is another reason why the Carrier's contention cannot be sustained. The defense to the payment of compensation for subsequent violations should have been made to the original claim. A party cannot participate in the hearing of the original claim, fail to raise a claimed defense and, then, under the guise of an interpretation, present that which he had opportunity but did not present at the hearing. By failing to raise such claimed defense at the hearing before the Division, he will be deemed to have waived it. The efficient and expedient handling of claims before the Division requires that this rule be followed, otherwise no finality could ever attach to the awards of the Division. The purpose of this Board is to expeditiously adjust and settle disputes, not to permit them to run on indeterminably.

The position taken by the Organization is sustained.

Referee Edward F. Carter, who sat with the Division as a member when Award No. 3900 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 28th day of April, 1949.