Award No. 4280
Docket No. TE-4116

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE GULF, MOBILE & OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad Company that W. L. Adams, Agent-Operator at Reform, Alabama, be paid one call account an employe not covered by the Scope Rule of the Agreement in effect transmitting a telegram at 5:15 A. M., February 9, 1947, a time outside the assigned hours of Claimant but when the Claimant was available for call.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date of March 1, 1920, is in effect between the parties to this dispute; the position of Agent-Telegrapher at Reform, Alabama, is listed in the agreement on which Agent-Telegrapher W. L. Adams, is employed with assigned hours 8:00 A. M. to 5:00 P. M., one hour allowed for meals, daily except Sundays and Holidays, and is required to report for duty each Sunday for one, three-hour period under the call rule.

On Sunday, February 9, 1947, the Carrier without recourse to the regular assigned Agent-Telegrapher to the office under the provisions of Article 4-(e) of the Telegraphers' Agreement, permitted or required, Conductor Gorman, on train No. 129, to transmit by railroad telephone from Reform, Alabama, at 5:15 A. M. when the Agent-Telegrapher was available for duty but was not called the following message of record:

"Reform, Alabama, 2-9-47

W. J. B.—B-74 (Tuscaloosa)

W. L. C.—219 (Artesia)

No. 129 had out 219 N&W 120090 CB&Q 30435 no bills—advise B-74 quick.

(s) Gorman."

POSITION OF EMPLOYES: The Gulf, Mobile & Northern Railroad Company and the Mobile & Ohio Railroad Company merged in the year 1940, changing the corporate name to the Gulf, Mobile & Ohio Railroad Company. The Gulf, Mobile & Ohio Railroad Company at the time of the merger mentioned above adopted all GM&N, NOGN and M&O contracts and working agreements. GM&N and NOGN contracts and working agreements to apply to former GM&N and NOGN employes. M&O contracts and working agreements will apply to former M&O employes, this claim is based on M&O contract applying to former M&O employes.

3. Claimant failed to comply with Operating Department Rule No. 877.

(Exhibits not reproduced.)

OPINION OF BOARD: A one-shift telegrapher office is maintained at Reform, Alabama, with assigned hours 8:00 A. M. to 5:00 P. M., with one hour allowance for meals, and to report on Sundays for a call of three hours. On February 9, 1947, the Carrier required or permitted Conductor Garmon, on train No. 129, to transmit by railroad telephone from Reform, at 5:15 A. M., a message to the Assistant Chief Dispatcher at Tuscaloosa and the Terminal Trainmaster at Artesia informing them that he had two cars in his train without waybills.

The applicable rule is Article 1 (c), current Agreement, which provides:

> "No employes, other than those covered by this agreement and train dispatchers, shall be required or permitted to do telegraphing or telephoning in connection with the movement of trains, except in bona fide emergency cases."

It will be borne in mind that all telephone communications between railroad employes are not subject to the Telegraphers' Agreement. It would be beyond all reason to say that it was intended that an instrument of common convenience and general usage, such as the telephone has become, was to be used exclusively by one class of employes. The more correct statement is that its use was reserved to telegraphers to the extent necessary to protect the work within the Telegraphers' Agreement which was being endangered by the increased use of telephones in lieu of telegraphic instruments. The rule generally employed in describing telephone work reserved to telegraphers is that the use of a telephone to transmit or receive messages, orders or reports of record belong exclusively to telegraphers. This may, however, be limited or enlarged by negotiation. In the instant case, a specific rule, hereinbefore cited, dealing with employes entitled to use the telephone in connection with the movement of trains is in effect. Without belaboring the question, the communication of information that a train includes two cars without waybills does not appear to involve the movement of trains under the evidence adduced in the present record.

It is claimed that the message sent was a message of record. The evidence shows that the message, a photostat of which is in the record, was prepared by Conductor Gorman for the purpose of personal delivery to the Assistant Chief Dispatcher when he arrived at Tuscaloosa. While delayed at Reform, he called the Assistant Chief Dispatcher and told him about the two cars in his train without waybills. He left his message on the table in the Agent's office in Reform. Carrier asserts that it was not required to be made of record at Reform and that such communications are ordinarily delivered in person upon arrival of the train at Tuscaloosa. The evidence does not show that it actually was made a matter of record or that there was any requirement that it was to be considered a message of record. Assuming for the purposes of this decision without so deciding, that such fact, if established, would support an affirmative award, there is a failure of proof as to this phase of the case.

We are obliged to hold that the message was not in connection with the movement of trains within the meaning of the cited rule and that the evidence is insufficient to establish it as a message of record. A denial of the claim must follow.

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 a violation of the Agreement is not established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of January, 1949.