

Award No. 10078

Docket No. TE-7860

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN PACIFIC COMPANY (*Pacific Lines*)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Company (*Pacific Lines*) that:

1. Carrier violated and continues to violate the terms of the agreement between the parties when it requires or permits train service employees, holding no rights under the Telegraphers' Agreement, by use of the radio, to handle orders, messages, "OS" (report trains), and perform other communications service of record on the Portland Division.

2. Carrier shall be required to compensate the senior qualified idle extra Telegrapher, or if no extra Telegrapher available, then the senior idle regularly assigned Telegrapher at the nearest location to the point on the division where the violation occurred, eight (8) hours' pay at the minimum Telegrapher's rate, commencing August 23, 1953, and continuing on each subsequent date and occasion that violations occur.

NOTE: The actual number of days and occurrences involved subsequent to August 23, 1953, and the compensation due, to be determined by a joint check of Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an agreement between the parties to this dispute bearing effective date of December 1, 1944 (reprinted March 1, 1951, including revisions). This agreement and all amendments thereto are involved, by reference, in this claim.

On or about July 1, 1953, Carrier commenced a radio communications system along its 100-mile stretch of main line through the Cascade Mountains on the Portland Division, extending between Eugene Yard and Crescent Lake, Oregon.

There is a train dispatcher's office located at Eugene Yard, where two dispatchers on each eight-hour shift control traffic around-the-clock throughout the section of track here involved. One train dispatcher controls movements from Eugene Yard as far as Oakridge, 46 miles south. The other dispatcher is responsible for traffic from Oakridge to Crescent Lake, a distance of approximately 54 miles.

case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the petitioner in such submission, which cannot be forecast by the carrier at this time and have not been answered in this, the carrier's initial submission.

OPINION OF BOARD: At the outset we are confronted with a contention by the Carrier that the claim presented to the Board is not the same claim that was handled on the property, and thus is not properly before us for consideration.

Questions of this nature have been raised in numerous prior awards. See, for example, Awards 5077 and 5502. We are of the opinion that such objections should not be lightly rejected where there appears to be some basis for their being raised. On the other hand they should not be accepted merely because they appear to be technically correct. As we said in Award 3256, ". . . it was not intended by the Railway Labor Act that its administration should become super-technical and that the disposition of claims should become involved in intricate procedures having the effect of delaying rather than expediting the settlement of disputes."

With these thoughts in mind we have compared the Statement of Claim as submitted to the Board with the specific claims submitted to the Carrier and made the subject of the dispute. The dis-similarity is striking, and represents a substantial expansion of the claim prejudicial to the Carrier, unless there was a clear warning that the claim was meant to include incidents subsequent to those enumerated. A prolonged and diligent search of the record fails to reveal anything that could be said to put the Carrier on notice that a general claim, continuing into the future, was intended.

Therefore, we find that the claim here presented has not been handled on the property as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. Hence the claim must be dismissed.

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

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee 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 is not properly before this Board.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schuly
Executive Secretary

Dated at Chicago, Illinois this 22nd day of September, 1961.