

**Award No. 10945**

**Docket No. TE-9461**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Preston J. Moore, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**GULF, COLORADO AND SANTA FE RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Colorado and Santa Fe Railway; that

1. The Carrier violated and continues to violate the Agreement between the parties when it requires or permits employes not covered by said Agreement at Beaumont, Texas, to 'OS' arrival and/or departure of trains;
2. The Carrier shall restore the work in question to the Telegraphers' Agreement to be performed by employes covered thereby; and
3. The Carrier shall be required to compensate G. F. Faulkner and/or L. R. Rantasha the equivalent of a call payment for each day the violation occurred during the period each claimant occupied the second shift telegrapher printer-clerk position at Beaumont, but at times when not assigned to duty, beginning February 8, 1956, and continuing until the violation is discontinued.

**EMPLOYES' STATEMENT OF FACTS:** At Beaumont, Texas, the Carrier maintains a relay telegraph office commonly known as "CD" Beaumont, located on Calder Avenue. For many years employes covered by the Telegraphers' Agreement in this office were assigned in around-the-clock service. A number of years ago, exact date unknown to the Employees, the Carrier abolished the third shift position and thereafter, during a period of time in the late night hours, the telegraph office has been closed. Various changes have been made from time to time in the assigned hours of the employes at "CD" Beaumont, which are unimportant to a determination of the issue here in dispute. At the time this dispute arose, telegraph service employes were assigned at Beaumont as follows:

While Part 3 of the Employees' claim, quoted in full on page 1 hereof, is to the effect that:

"The Carrier shall be required to compensate G. F. Faulkner and/or L. R. Rantasha the equivalent of a call payment for each day the violation occurred during the period each claimant occupied the second shift telegrapher printer-clerk position at Beaumont, but at times when not assigned to duty, beginning February 8, 1956, and continuing until the violation is discontinued. (Emphasis ours.)

the Carrier desires to again call attention to the fact that Claimant L. R. Rantasha resigned from service on June 16, 1956, and any claim in his behalf is restricted to the period from February 8 to June 16, 1956. Since the practice of the Assistant Chief Dispatcher obtaining information concerning the handling given perishable loads was discontinued on September 19, 1956, any claim in behalf of Claimant G. F. Faulkner is necessarily restricted to the period from February 8 to September 19, 1956.

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In summary, the Carrier respectfully reasserts that the Employees' claim in the instant dispute is premised on their incorrect and improper assumption or conclusion that Train No. 239 was OS'ed by a clerical employe on those dates when it arrived at Beaumont after the Telegraph Relay Office was closed. In view of the abundance of factual evidence and proof submitted herein, the Carrier most emphatically feels that the claim is without merit or support under the Agreement rules and is baseless, and that the Board will deny same.

The Carrier is uninformed as to the arguments the Employees will advance in their ex parte submission and accordingly reserves the right to submit such additional facts, evidence and argument as it may conclude are necessary in reply to the Organization's ex parte submission or any subsequent oral arguments or briefs submitted by the Organization in this dispute.

All that is contained herein is either known or available to the Employees and their representatives.

**OPINION OF BOARD:** This is a dispute between The Order of Railroad Telegraphers and The Gulf, Colorado and Santa Fe Railway Company.

At Beaumont, Texas the Carrier requires the telegraph office to be open from 6:15 A. M. to 10:15 P. M. The Organization contends that Employees not covered by their Agreement are "OS"ing train #239 when it arrives after the telegraph office is closed.

The Carrier admits that an Assistant Chief Dispatcher does call the Beaumont Yard Office each night to obtain the arrival time of #239. The Carrier contends that such information is to determine if #239 made with train #242 and if perishable freight was delivered to the TNO Railway and they further contend that this information is not recorded or used to control the movement of trains.

The burden of proof is upon the Claimant. The evidence is insufficient to establish the fact that the information furnished by clerks at Beaumont Yard constituted the "OS"ing of trains.

We recognize that it is difficult for the Organization to obtain evidence, but the claim cannot be sustained without further evidence.

For the foregoing reason, we find the Agreement was not violated.

**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 Employees involved in this dispute are respectively Carrier and Employees 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 not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December 1962.