

Award No. 11300

Docket No. TE-10094

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORFOLK SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk Southern Railway that:

1. (a) The Carrier violated the Agreement between the parties when it permitted or required a Section Foreman at Farmville, North Carolina on November 13, 1956 to "OS" (report) train No. 63, direct to the train dispatcher, as being "by" Farmville at 7:20 A. M.; and that

(b) The Carrier shall be required to pay Agent-Operator O. G. Spell, Farmville, for a "Call" — 2 hours at overtime rate — because of such violation.

2. (a) The Carrier violated the Agreement between the parties when it permitted or required a Section Foreman at Suffolk Junction, North Carolina, on January 31, 1957, to "OS" (report) train No. 98, direct to the train dispatcher, as being "by" Suffolk Junction at 7:50 A. M.; and that

(b) The Carrier shall be required to pay the senior idle operator on that date, Mr. L. E. Boyd, a day's pay because of such violation.

3. (a) The Carrier violated the Agreement between the parties when it permitted or required a Section foreman at Suffolk Junction, North Carolina, on May 13, 1957, to "OS" (report) train No. 98, direct to the train dispatcher, as being "by" Suffolk Junction at 7:30 A. M.; and that

(b) The Carrier shall be required to pay the senior idle operator on that date, Mr. F. L. Courtney, a day's pay because of such violation.

EMPLOYES' STATEMENT OF FACTS: Farmville, North Carolina, is located on Carrier's main line, approximately 160 miles south of Norfolk,

"It will be noted that before the items of work become exclusively the property of the telegraphers under the scope rule that the items must be "of record", which means that the conversations are important enough in the operation of the railroad to be made matters of record."

and, as stated above, this has long been the criteria urged and used by the petitioners to determine the exclusiveness of work to their class. Conversely, think when there is a transmittal of information such as in the instant claim, voluntarily especially, and without any requirement by the railroad for same, and it is not a matter of record, petitioners cannot be heard to contend that transmittal of such information is violative of their agreement.

Respondent holds that the claim is without merit or contractual foundation, and that same should be denied, and urges that your Board so hold.

All of the data contained herein has been discussed with the employe representatives either in conference or by correspondence, and/or is known and available to them.

This submission is made under the provisions of the motion of the Third Division adopted November 26, 1957, effective January 1, 1958, and carrier reserves to itself all the rights granted under said motion.

OPINION OF BOARD: This is a dispute between The Order of Railroad Telegraphers and Norfolk Southern Railway Company.

This docket includes three disputes which were separately handled on the property. Our views, in disposing of the claims, require discussion of each claim.

1. It was alleged in the original claim filed by the Organization, that a Section Foreman, at Farmville, North Carolina, "OS'd" Train No. 63 at 7:20 A. M., on November 13, 1956. The General Superintendent, in reply, stated that "neither the dispatcher on duty nor the section foreman have any knowledge of this alleged OS'ing of No. 63 * * * it is denied that the section foreman on this date OS'd No. 63 as alleged". On appeal to the next level of handling, the Organization merely reiterated the assertion theretofore made. Again, the claim was denied on the principal ground that the section foreman did not "OS" the train.

We have held consistently that the burden of proving an allegation of fact is upon the party asserting same. See Awards 1983 and 9261. This claim must be denied for failure of proof.

2. In this claim it was alleged that a Section Foreman at Suffolk Junction, North Carolina, on January 21, 1957, "OS'd" Train No. 98 at 7:50 A. M. Further, it was stated that Train Dispatcher included the report of this train in Line-up of Trains, addressed to "All Concerned" at various stations, issued at 7:55 A. M. The Carrier conceded that the Section Foreman did make this report and that the information was utilized by the Train Dispatcher in the Train Line-up.

The Carrier admits that the transmission of "OS" reports that are made a matter of record on the dispatchers record of train movements is work that belongs to telegraphers.

The Carrier contends however that the Section Foreman gave the report of his own volition. This fact is immaterial, the information was used in issuing the Train Line-up. We hold, therefore, that the Agreement was violated.

3. A different situation exists, however, on the claim for May 13, 1957, at Suffolk Junction. Here there was the mere allegation that the Section Foreman reported passing of Train No. 98 at 7:30 A. M. It was not denied that the Section Foreman did make the report but on the first level of handling it was pointed out that this case differed from the first claim at Suffolk Junction, in that the information was not included in the train line-up. The Organization did not take issue with this statement of fact. The Carrier's highest officer stated that the Section Foreman was neither required, nor instructed, to report passing of the train.

Thus, this claim rests on the mere statement that the Section Foreman reported (OS'd) No. 98 by Suffolk Junction. There is no showing that the Train Dispatcher heard the report or made any use of such information, if he did hear it. This claim must also fail for lack of proof by the Organization.

Claim 2(b) requests the payment of one day's pay to the named Claimant. Award 8687, involved disputes between the same parties resulting from the handling of train orders at points where telegraphers were not employed. The claims there were based on the Scope Rule, as in the instant case. One day's pay was requested for each date of claimed violation.

In disposing of the compensatory claim, the Board held that a "call payment", would be the appropriate damage for each date of violation. This disposition, we believe, is entitled to much weight in assessing damage here. Accordingly, the claim for January 31, 1957, will be sustained and L. E. Boyd will be allowed compensation for one call, as provided in Article 4.

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 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 violated.

AWARD

Part 1, denied. Part 2, sustained as set forth in Opinion. Part 3, denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of April 1963.