Award No. 11343
Docket No. TE-10146

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railway that:

1. Carrier violated the agreement between the parties when it required or permitted employes not covered by the agreement to transmit and/or receive messages at Okolona, Mississippi on February 23, 25 and March 11, 1957 and at Mobile, Alabama on March 11, 1957.

2. Carrier shall compensate: B. N. Thomason, telegrapher at Okolona, in the amount of a minimum call payment on February 23, 1957: E. E. Sedberry, telegrapher at Okolona, in the amount of a minimum call payment on February 25, and March 11, 1957; the senior, idle telegrapher on the seniority district, extra in preference, in the amount of a day's pay (8 hours) on March 11, 1957.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

Okolona, Mississippi is a station on this Carrier's lines and is a Division Point, the juncture of the Northern and Southern operating divisions. The supervision of the operations at Okolona are under the jurisdiction of the Superintendent of the Northern Division with headquarters at Jackson, Tennessee; the positions and employes at Okolona covered by the Agreement are included in the seniority district of the Southern Division with headquarters at Meridian, Mississippi. This situaton has caused some confusion in the handling of claims based on violations occurring at Okolona, no set pattern has been firmly established. Some claims have been handled through the Superintendent at Jackson and others through the Superintendent at Meridian. Claims handled through each channel have been considered and if necessary have been appealed and progressed further.

The Carrier, until a few years ago, maintained continuous communication service at Okolona with three shifts around the clock. At the time cause for this claim arose there were two seven-day positions. One with assigned hours 7:30 A.M. to 3:30 P. M. and the other 9:30 P. M. to 5:30 A. M., each relieved

years. Telephones have been used by other than telegraphers on other parts of the railroad since 1925. Throughout this time various employes made use of the telephone. It was the custom and practice for Trainmasters and others to discuss various problems on the telephone with Dispatchers. It was the practice for clerical employes to use the telephone in the performance of their duties. This practice has continued since the current Agreement was negotiated.

Knowing that the agreement between the parties did not provide the exclusive rights to telegraphers referred to in this claim, twice the Organization has proposed that the contract be enclarged to provide a basis for the claims. Neither proposal has been accepted. A sustaining claim in this case would be tantamount to writing into the contract that which the parties to the contract considered and purposely omitted. The telephone conversations referred to in this claim took only a matetr of seconds. It would be an unnecessary waste of revenues and man-power as well as impairment of efficiency of operations to require that only telegraphers could use the telephone to the extent referred to in this claim. For the contract to contain such a requirement would necessarily be by specific language, such as that proposed and rejected. The claims are contrary to the Agreement and the accepted practice and application.

The claim is totally without merit and should be declined.

Carrier reserves the right to make an answer to any further submission of the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: This Claim pertains to the use of special railroad telephones (installed on this property in 1941) by employes other than telegraphers to transmit or receive certain communications: one in regard to a line-up; another, the tracing of a waybill; and another, freight rates on furniture.

The Agreement of the Parties, effective June 1, 1953, supersedes four prior Agreements, and we must first examine it to determine whether it contains express contractual language sustaining the contentions of the petitioning Organization. In this regard, we find only two Rules which shed some light on the problem:

"RULE 1

Scope

(a) This agreement shall govern the employment and compensation of manager-operators, wire chiefs, telegraphers, telephone operators (except switchboard operators), agent-telegraphers, agent-telephoners, clerk-telegraphers, clerk-telephoners, teletype and/or printer operators (to the extent covered by agreement dated October 27, 1947), towermen, levermen, tower and train directors, block operators, and staffmen, specified in wage scale, and analogous positions hereafter established; also such agents as are listed herein.

(b) The word 'employe' as used in this agreement shall include all classifications coming within the scope of this agreement unless specific classifications of employes are set forth."

* * * * *

"RULE 15

Train Orders

No employes other than covered by this agreement and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call."

It seems clear that these contractual clauses (standing alone) are insufficient to sustain an affirmative Award in respect to the particular communications involved in the case at hand.

Rule 15 does not.

As to Rule 1, in Award 8207, which involved these Parties, we said:

". . . The Scope Rule merely lists the positions covered and names among others Telegraphers and Telephone Operators. Under such a general rule the decisions of the Board are unanimous that the question whether exclusive jurisdiction is conferred to perform any particular work depends upon tradition, historical practice, and custom . . ."

Award 8707 alluded to a scope rule similar (but not identical) to the one in the current Agreement; however, our more recent Award 10237 did interpret said Rule 1 of the present Agreement:

". . . The scope rule of the Agreement of June 1, 1953 with the Telegraphers' Organization does not purport to describe the nature and extent of the duties to be performed by the Employes of the railroad represented by the Organization. Reference must be had to establish custom and practice on this property to ascertain the areas of duties and service delegated to them . . ."

It follows, then, that we are required to examine evidence pertaining to tradition, historical practice, and custom on this property in order to properly adjudicate the issues arising from this Claim.

The Organization failed to present evidentiary data in this regard; its ex parte submission contains no exhibits; and no statements—in affidavit form or otherwise—are attached to and made a part of said submission.

It is axiomatic that the Board is not justified in concluding that the existence of an established practice has been proved by unsupported allegations set forth in an ex parte submission—this being especially true in cases (such as the one at hand) where such assertions are controverted.

It was contended in behalf of the Employes in panel discussion that the needed information in regard to past practice could be obtained by reference to Awards of the Board on this property: Awards 4018, 5133, 5256, 5281, 5663, 6675, 6689, 8014, 8207, and 8208. We have studied these Awards and cannot find in them the clear, consistent findings and definitions which would solve the problems now confronting us. Without belaboring the matter, or unduly lengthening this Award, it appears to us that some of the cited Awards are not sufficiently in point; that others are materially distinguishable; that a

few support to some degree one or more items of the Claim; and that some (in essence) support the basic contentions of the Carrier. Moreover, none of the aforesaid Awards construed the current Agreement—the contractual clauses of the prior Agreements not being identical.

Award 10237, as indicated above, is of no help to the Organization in obtaining an affirmative Award herein.

We are of the belief that the Claim must be denied for the following reasons:

1. The language of the Agreement does not (standing alone) dictate a sustaining Award.

2. The Organization failed to present sufficient proof of an established past practice on the property in regard to the issues involved herein.

Having reached this conclusion on the specific grounds set forth above, the Board makes no findings on other issues presented by the Parties or in their behalf.

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 Organization failed to sustain its charge that the Agreement was violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April, 1963.