

**Award No. 11730**  
**Docket No. TE-10391**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Jim A. Rinehart, Referee**

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**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 Railroad, that Carrier violated Agreement between the parties, when:

- 1 - (a) On August 13, 1957 at Waynesboro, Mississippi, it required or permitted Hot Box Inspector D. R. Knox, an employe not covered by the Agreement, to transmit an "OS" report to the train dispatcher at a time when the Agent-Telegrapher was off duty.  
  
(b) Carrier shall compensate J. W. Odom, Agent-Telegrapher, Waynesboro in the amount of a minimum call payment.
- 2 - (a) On April 29, 1957 at Quitman, Mississippi, it required or permitted Trainmaster Selph, an official not covered by the Agreement, to transmit an "OS" report to the train dispatcher at a time when the Agent-Telegrapher was off duty.  
  
(b) Carrier shall compensate A. C. Elliott, Agent-Telegrapher, Quitman, in the amount of a minimum call payment.
- 3 - (a) On October 29, 1957, at Ethelville, Alabama, it required or permitted L. B. McEachin, Exclusive Agent, Tuscaloosa, not covered by the Agreement, to transmit an "OS" report to the train dispatcher.  
  
(b) Carrier shall compensate J. A. Pilkinton, senior idle telegrapher on the seniority district, in the amount of a day's pay of eight hours.
- 4 - (a) On December 8, 1957 at Ethelville, Alabama, it required or permitted L. B. McEachin, Exclusive Agent, Tuscaloosa, not covered by the Agreement, to transmit an "OS" report to the train dispatcher.

- (b) Carrier shall compensate W. L. Adams, senior idle telegrapher on the seniority district in the amount of a day's pay of eight hours.
- 5 - (a) On January 4, 1958 at Okolona, Mississippi, it required or permitted Terminal Trainmaster Massing, an official not covered by the Agreement, to receive train lineup and transmit train "call" message, at a time when no telegrapher was on duty.
  - (b) Carrier shall compensate E. E. Sedberry, first trick telegrapher at Okolona, in the amount of a minimum call payment.
- 6 - (a) On August 26, 1957 at Battles, Mississippi, it required or permitted Superintendent St. John, an official not covered by the Agreement, to transmit messages to the train dispatcher.
  - (b) Carrier shall compensate W. L. Adams, senior idle telegrapher on the seniority district, in the amount of a day's pay of eight hours.
- 7 - (a) On October 28, 1957 at Mile Post B-36, it required or permitted Superintendent St. John, an official not covered by the Agreement, to transmit messages and reports to the train dispatcher.
  - (b) Carrier shall compensate W. L. Adams, senior idle telegrapher on the seniority district, in the amount of a day's pay of eight hours.
- 8 - (a) On November 19, 1957 at Brent, Alabama, it required or permitted a Section Foreman, an employe not covered by the Agreement, to transmit a message to the train dispatcher.
  - (b) Carrier shall compensate J. A. Pilkinton, senior idle telegrapher on the seniority district, in the amount of a day's pay of eight hours.
- 9 - (a) On April 29, 1957 at Columbus, Mississippi, it required or permitted J. B. Flock, Division Freight Agent, an official not covered by the Agreement, to transmit a message to Artesia, Mississippi.
  - (b) Carrier shall compensate the senior idle employe on the seniority district, extra in preference, in the amount of a day's pay of 8 hours at the adjusted Columbus rate.
- 10 - (a) On August 15, 1957 at Columbus, Mississippi, it required or permitted J. B. Flock, Division Freight Agent, an official not covered by the Agreement, to transmit a message to Artesia.
  - (b) Carrier shall compensate the senior idle employe on the seniority district, extra in preference, in the amount of a day's pay of 8 hours at the adjusted Columbus rate.
- 11 - (a) On December 30, 1957 at Columbus, Mississippi, it required or permitted J. B. Flock, Division Freight Agent, an official not covered by the Agreement, to transmit a message to Artesia.

- (b) Carrier shall compensate W. L. Adams, senior idle telegrapher on the seniority district, in the amount of a day's pay of 8 hours at the Adjusted Columbus rate.
- 12 - (a) On April 2 and 3, 1957 at Mobile, Alabama, it required or permitted an employe not covered by the Agreement to transmit messages to another employe not covered by the Agreement at Okolona, Mississippi.
- (b) Carrier shall compensate the senior idle telegrapher on the seniority district, extra in preference, in the amount of a day's pay of eight hours on April 2 and 3, 1957 and compensate E. E. Sedberry, first trick telegrapher Okolona, in the amount of a minimum call payment on each date.
- 13 - (a) On September 25, 1957 at Mobile, Alabama it required or permitted an employe not covered by the Agreement to transmit a diversion message to Artesia.
- (b) Carrier shall compensate the senior idle telegrapher on the seniority district, extra in preference, in the amount of a day's pay of eight hours at the adjusted Mobile rate.
- 14 - (a) On December 16, 1957 at Mobile, Alabama, it required or permitted an employe not covered by the Agreement to transmit and receive messages.
- (b) Carrier shall compensate W. L. Adams, senior idle telegrapher on the seniority district, in the amount of a day's pay at the adjusted Mobile rate.
- 15 - (a) On November 5, 1957 at Okolona, Mississippi, it required or permitted an employe not covered by the Agreement to transmit a message to Artesia at a time when no operator was on duty.
- (b) Carrier shall compensate E. E. Sedberry, first trick telegrapher at Okolona in the amount of a minimum call payment.
- 16 - (a) On November 12, 1957 at Okolona, Mississippi, it required or permitted an employe not covered by the Agreement to transmit a message to Artesia at a time when no operator was on duty.
- (b) Carrier shall compensate E. E. Sedberry, first trick telegrapher at Okolona in the amount of a minimum call payment.
- 17 - (a) On November 26, 1957 at Okolona, Mississippi, it required or permitted an employe not covered by the Agreement to transmit and receive messages with Artesia at a time when no operator was on duty.
- (b) Carrier shall compensate E. E. Sedberry, first trick telegrapher at Okolona, in the amount of a minimum call payment.
- 18 - (a) On June 1, 1957 at West Point, Mississippi, it required or permitted an employe not covered by the Agreement to transmit

a message to Artesia, at a time when the Agent-Telegrapher was off duty.

- (b) Carrier shall compensate W. J. Howell, Agent-Telegrapher, West Point, in the amount of a minimum call payment.

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

The cases cited above in the Statement of Claim are all violations of the Scope Rule of the Agreement and are what may be generally called communication violations other than train orders. While other rules of the Agreement come into play to confirm the violation and to determine the amount of reparation due because of the breach of agreement, the violations are primarily of the Scope Rule which reads as follows:

#### **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 ‘employee’ as used in this agreement shall include all classifications coming within the scope of this agreement unless specific classifications of employees are set forth.”

The above scope rule covers the work accruing to the classes set forth therein. Further discussion of this rule and other rules which will be introduced will be taken up in the Position of Employees later in this submission.

All of the stations involved in the instant dispute are located on what was formerly the Mobile and Ohio Railroad. The Gulf, Mobile and Ohio Railroad (GM&O), Respondent Carrier in this dispute, is made up of three railroad companies and a portion of another. The Gulf, Mobile and Northern (GM&N) comprised what is now the Tennessee and Alabama Division; the portion of the New Orleans and Great Northern (NO&GN) absorbed by the GM&O is now the Louisiana Division; the former Alton Railroad is now the Eastern and Western Divisions; the former Mobile and Ohio (M&O) is now the Northern and Southern Divisions. In 1930 the NO&GN became a part of the GM&N; in 1940 the GM&N and the M&O merged and were re-named the Gulf, Mobile and Ohio (GM&O); in 1947, the Alton Railroad became a part of the GM&O. Prior to June 1, 1953, each of these separate sections of the system retained the Telegraphers' Agreement in existence when the particular section held identity as a separate carrier. The revised Agreement, effective June 1, 1953, covers all the positions and work under the scope of the Agreement over the entire system.

#### **CASE NO. 1**

Waynesboro, Mississippi, is a station on the Southern Division where there is one position of Agent-Telegrapher under the Agreement with assigned hours

**OPINION OF BOARD:** The claim is for a violation of the Scope Rule and concerns 18 different messages.

The effective Agreement bears date of April 20, 1953, to become effective June 1, 1953. It superseded four previous Agreements that had existed prior to the merger of four Railroads.

The Scope Rule of the June 1, 1953 Agreement omitted a provision of the prior Agreements designated sub-division (c) which was as follows:

“(c) No employees, 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.”

The record contains a letter dated April 17, 1953 signed by C. M. Barr, General Chairman of the Organization, addressed to Mr. T. A. Steel, Contract Counselor of the Carrier, as follows:

“In compliance with your request concerning the Scope Rule coverage in the agreement effective June 1, 1953, it is understood by both parties that the coverage of the Scope Rule in that Agreement neither restricts nor extends the coverage of the combined scope rules of the four agreements being superseded, namely: The Alton Railroad Agreement effective June 16, 1944; the Mobile and Ohio Railroad Company Agreement effective March 1, 1929; The Gulf, Mobile and Northern Railroad Company Agreement effective February 1, 1928; the New Orleans Great Northern Railroad Company Agreement effective December 1, 1926.”

Both Mr. Barr and Mr. Steel signed the Agreement effective June 1, 1953. It is fundamental that the elements, discussions, conditions and rights desired to be secured by a bargain are merged in the contract which results therefrom. Unless such provisions are present they are no part of the contract. The letter does not constitute a condition precedent to the operation of the contract. As it stands, its legal effect is nil. At best it was a futile attempt to escape the tightening coils of the then new contract.

There have been a number of recent disputes before this Board involving the same facts, the same parties and the same Agreement. See Awards 11331—Coburn; 11707 — Dolnick; 11343 — Miller. All of them denied the claim. Those awards are controlling here. The eighteen claims set forth in this Docket Number are without merit and must be denied.

**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.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September 1963.