

Award No. 11790
Docket No. TE-9899

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**ATLANTA AND WEST POINT RAILROAD COMPANY
THE WESTERN RAILWAY OF ALABAMA**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlanta and West Point—Western Railway of Alabama, that:

(1) The Carrier violated the agreement between the parties when on November 10, 1956 it required or permitted Conductor Burns at Milstead, Alabama, to handle (receive, copy and deliver) Train Order No. 25.

(2) The Carrier violated the agreement between the parties when on November 28, 1956 it required or permitted Conductor of Work Extra 118 at Palmetto to receive Train Order No. 2 at La-Grange.

(3) The Carrier shall, for each of the violations set forth above, pay the senior idle telegrapher, extra in preference, a pro rata day's pay at the minimum telegraphers' rate. The identification of payee to be determined by a check of Carrier's records.

EMPLOYES' STATEMENT OF FACTS: On November 10, 1956 the following train order was copied and made complete by Conductor Burns on Train No. 6 at Milstead, Alabama:

Form
19

Form
19

ATLANTA AND WEST POINT RAIL ROAD COMPANY
THE WESTERN RAILWAY OF ALABAMA
TRAIN ORDER NO. 25

11-10 1956

TO C & E.....AT Milstead

No. 35 Eng 551 wait at Chehaw until 940 nine forty am
for No. 6 Eng 521

E.J.H.

the personal judgment of the latter referee * * * should be substituted for that of the former referee.'

A contrary course would tend to discourage settlements between the parties and discourage prompt compliance with Awards rendered."

It will be noted in Petitioner's statement of claim they show no rule violation, merely making the broad allegation that the agreement was violated. In initial handling on the property, the general chairman made claim as follows:

"On November 10, 1956 Conductor Burns, Train No. 6 copied train order no 25 at Milstead, Ala, completing same at 8:25 A. M.

"On November 28, 1956 Conductor of work extra SRS-118 at Palmetto was furnished order No. 2 at LaGrange, Ga. reading Engine SRS-118 at Palmetta % Work Extra SRS-118 and all concerned East.

"Claim for eight hours pay for senior idle telegrapher, preferably extra, is made for each of the above violations.

"Please advise your acceptance."

It will be noted no rule is cited as being violated and in subsequent appeals no rule violation was cited. Indeed, there are none. Due to the manner in which claim was handled, Carrier has no idea of what will be argued in Petitioner's ex parte submission, and is in no position to comment on same. Carrier is frankly at a loss to understand Petitioner's motive in progressing a case of this kind in view of the fact that two cases of the same character, one identical, have been denied on the property. We assume "hope springs eternal in the human breast."

There is no merit to this claim and we respectfully request it be denied.

To the extent possible, data contained herein has been made available to Petitioner.

OPINION OF BOARD: This case is factually indistinguishable from the dispute between these same parties decided by our Award 6487, which was adopted on February 11, 1954.

Effective September 16, 1956, the parties revised their agreement, re-adopting without change the rules upon which the employees relied for support of their claim in Award 6487. Those same rules are relied upon in the same manner in the present case.

This Board has often and properly held that re-adoption of an agreement provision in identical language evidences re-adoption of interpretations thereof. In Award 2679 it was said:

"We think the rule is that where a portion of a written contract is carried forward verbatim into a new contract, all interpretations of the old agreement are carried forward into the new unless there be a declared intent to the contrary. . . ."

See, also, Awards 4791 and 7968.

In Award 5133, this Board held that:

" . . . It does not admit of dispute that the Board's interpretation of rules becomes a part of the Agreement to all intents and purposes as though written into the rule book. . . ."

These official pronouncements are sound and directly applicable to the dispute before us. The Board interpreted the rules pleaded in Award 6487, which interpretation became a part of the contract between the parties. Those same rules were carried forward, in identical language, into the new agreement. Thus the parties ratified the interpretation of Award 6487, and they may not now be heard to complain.

Because the claims must be denied for the reasons indicated, it is unnecessary to consider other matters discussed in the record.

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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 25th day of October 1963.