

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SOUTHERN RAILWAY COMPANY

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

1. Carrier violated the Scope Rule of the Telegraphers' Agreement when on September 24, 1956 at 6:15 P. M. it required or permitted Section Foreman Capps to communicate by telephone with the Dispatcher at Louisville, Kentucky, and the telegrapher at Milltown, Indiana, and transmit a message of record from Birdseye, Indiana, after Agent-Telegrapher Mathers, Birdseye, Indiana had closed his office for the day.

2. Carrier shall compensate E. Mathers, Agent-Telegrapher, Birdseye, Indiana, for one call (two hours and forty minutes) under Rule 10 at the time and one-half rate of his position for September 24, 1956.

EMPLOYES' STATEMENT OF FACTS: Mr. E. Mathers is the regular assigned Agent-Telegrapher at Birdseye, Indiana. His regular assigned hours are 8:00 A. M. to 5:00 P. M. with one hour off for lunch. His work week begins on Monday and his assigned rest days are Saturday and Sunday.

On Monday, September 24, 1956 Section Foreman Capps used the telephone at Birdseye, Indiana at 6:15 P. M. after Agent-Telegrapher Mathers had gone off duty to call the Dispatcher. The Dispatcher called the Telegrapher on at Milltown, Indiana and instructed the Telegrapher at Milltown to copy the message which Section Foreman Capps was about to send and relay it to the Chief Dispatcher's office by Morse wire. Section Foreman Capps then sent the following message over the telephone:

"Message

Birdseye, Indiana

F. I. Geddes, Chief Dispatcher
Louisville, Kentucky

September 24th, 1956

9:01 A. M. until 6:01 P. M. September 25th, have all trains reduce speed to 20 Miles per hour between MP 217 and MP 215.5 account of Extra Gang laying new rail.

/s/ C. F. Capps 6:17 P. M."

In Third Division Award 6828, Referee Messmore, it was held:

"The authority of this Division is limited to interpreting and applying the rules agreed upon by the parties. * * *

"The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance.' See Awards 3523, 6018, 5040, 5976."

The Board, having heretofore recognized the limitations placed upon it by law, and the fact that it is without authority to grant new rules or conditions of employment or modify existing rules, as here demanded by the ORT, and will, therefore, not attempt to further restrict Carrier's inherent rights, can deny the absurd claims which the ORT here has presented for this one reason, if for no other, and there are many others.

CONCLUSION

Carrier has proven that:

(a) Claims which the ORT here attempts to assert are **not** supported by the Scope or any other rule contained in the Telegraphers' Agreement. Neither the scope nor any other rule was violated. That monopolistic rights here claimed by the ORT have **not** been granted has also been recognized by the ORT. Furthermore, practices under the agreement in evidence and the Brotherhood's action support, without question, the inescapable conclusion that there is no basis for the absurd claim that ORT here attempts to assert.

(b) Prosecution by the ORT of the demands which it has presented to the Board is nothing more than part of a concerted effort to create work and exact unearned compensation from the Carrier and thereby establish new rules and conditions of employment, which if granted, would have the effect of requiring the Carrier to revert to the horse and buggy days of railroading.

Claim being absurd and without any basis whatever, the Board cannot do other than make denial awards.

Carrier, not having seen the ORT's submissions, reserves the right after doing so to reply thereto.

All evidence here submitted in support of Carrier's position is known to employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: This case is the same in all material respects as in Docket No. TE-10007, Award No. 11812. We adopt the opinion therein as determinative of the issues in this case.

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 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 25th day of October 1963.