

Award No. 12081
Docket No. TE-12723

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Joseph S. Kane, 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 Railroad, that:

1. Carrier violated the Agreement between the parties when on July 20, 1960, it required or permitted a car inspector, not covered by the Agreement, to "OS" a train and transmit a message to the train dispatcher and to receive a message from the train dispatcher at Bethel Springs, Tennessee.
2. Carrier shall compensate the senior idle employes, extra in preference, on Seniority District No. 3, in the amount of a day's pay (8 hours) on July 20, 1960.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective June 1, 1953, is available to your Board and by this reference is made a part hereof.

Bethel Springs, Tennessee, is a station on the Northern Division of this Carrier's lines. At 9:52 A.M. on July 20, 1960, a Car Inspector at Bethel Springs used the telephone and transmitted the following message to the Train Dispatcher at Murphysboro, Illinois:

"This is Carman at Bethel Springs, the NP 9568 is now OK to move to Corinth for wheels has Cardwell lubricating packing. No. 30 just passed here running OK."

The Carman then copied the following message from the Train Dispatcher:

"OK, let's see if anything else on line for you. Car at Trenton with no hand brake."

There is no dispute concerning the fact that this exchange of information, by use of telephone, between the Train Dispatcher and Car Inspector, took place on July 20, 1960.

CONCLUSION

The record conclusively shows that other than telegraphers have been using the telephone for many years in the performance of their duties and that this use was in general practice at the time the current Agreement was negotiated (June 1, 1953). It was the custom and practice for employees to daily discuss various problems on the telephone in the performance of their duties.

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 enlarged 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 matter 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 claim is contrary to the Agreement and the accepted practice and application.

The claim is totally without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute is the same in all material respects as in Award No. 11730. We adopt the opinion therein as determinative of the issues in this dispute.

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 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 14th day of January 1964.