

**Award No. 12083**

**Docket No. TE-12930**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

(Supplemental)

Joseph S. Kane, 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:

1. Carrier violated the Agreement between the parties when on October 19, 1960, February 12, April 22, 26 and May 3, 1961 it required or permitted employes not covered by the Agreement to transmit and receive messages at Tamms, Illinois and Venice, Illinois.

2. Carrier shall be required to compensate either the first or second trick operator at Tamms, Illinois in the amount of a minimum call payment on each date set forth above; and, either the first or second trick operator at Tolson, Illinois in the amount of a minimum call payment on each of the same dates.

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

Tamms, Illinois is a station on the Northern Division of this Carrier's lines, about 130 miles south of St. Louis, Missouri. There are two seven-day positions under the Agreement at Tamms. Agent-telegrapher from 7:00 A. M. to 3:00 P. M. and telegrapher from 5:00 P. M. to 1:00 A. M.

Venice, Illinois is located just east of and across the Mississippi River from St. Louis, Missouri. It is located at the juncture between the Northern Division and the Eastern Division. Tolson, Illinois is on the Northern Division just east of and across the Mississippi River from St. Louis, Missouri. Venice and Tolson are about four miles distant from each other; Venice just north of East St. Louis, Illinois and Tolson in the southern outskirts of East St. Louis, Illinois. The Carrier maintains freight yard facilities at both points. For practical purposes, when dealing with Northern Division trains, it is one freight yard with Venice being the north yard and Tolson the south yard. The Northern Division communication office for this freight yard facility is located in the south yard at Tolson. There are two positions designated as

In Award No. 6673, Referee Francis J. Robertson stated:

**"The burden of showing sufficient facts to establish a violation of the Agreement rests with the Employees as asserting parties."** (Emphasis ours).

In Award No. 6698, Referee J. Glenn Donaldson stated:

**"The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance (Awards 4011, 3393, 3473, 2577 and others)."**

**A SUSTAINING AWARD WOULD BE WASTEFUL IN MANPOWER AND REVENUES, AND REQUIRE THE EMPLOYMENT OF TOTALLY UNNECESSARY EMPLOYEES AND PROMOTE INEFFICIENCY**

Members of this Board who are intimately familiar with railroad operations will readily appreciate the far reaching effect of a sustaining award here. It would require the employment of telegraph operators to either replace or supplement all other employees who use the telephone. This would result in unnecessary, expensive and wasteful jobs. It is imperative, particularly at this economic stage, for the Carrier to exert every effort to operate efficiently and economically in accordance with its obligation under the Transportation Act. The result of an agreement that only telegraphers could use the telephones would make the telephone system, for all practical purposes, worthless.

**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 discuss daily 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 award in this case would be tantamount to writing into the contract that which the parties to the contract considered and purposely omitted. It would be an unnecessary waste of revenues and manpower, 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.

This 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.