

Award No. 12085
Docket No. TE-13792

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:

Case No. 1

1. Carrier violated the Agreement between the parties when on June 17, July 30 and September 16, 1961, it required or permitted Clerks at Tamms, Illinois and Venice, Illinois, employes not covered by the Agreement, to handle messages.

2. Because of these violations, Carrier shall compensate either the first or second shift telegrapher at Tamms, Illinois, and either the first or second shift telegrapher at Tolson, Illinois, each in the amount of a call allowance for each day June 17, July 30 and September 16, 1961.

Case No. 2

1. Carrier violated the Agreement between the parties when on September 4, and 5, 1961, it required or permitted a Clerk (not covered by the Agreement) at Meridian, Mississippi, to transmit two messages to a Clerk (not covered by the Agreement) at Union, Mississippi.

2. Because of these violations, Carrier shall compensate the senior idle employe, extra in preference on Seniority District 4, in the amount of a day's pay of eight (8) hours at the applicable rate for each day, September 4 and 5, 1961, for the violations at Meridian on those dates; and, because of these violations, Carrier shall compensate the senior idle employe, extra in preference on Seniority District 5, in the amount of a day's pay of eight (8) hours at the applicable rate for each day, September 4 and 5, 1961, for the violations at Union on those dates.

Case No. 3

1. Carrier violated the Agreement between the parties when on Septem-

ber 5, 1961, it required or permitted a Clerk (not covered by the Agreement) at Artesia, Mississippi, to transmit a message to a Clerk (not covered by the Agreement) at Iselin Shop, Tennessee.

2. Because of these violations, Carrier shall compensate the senior idle employe, extra in preference on Seniority District 3, in the amount of a day's pay of eight (8) hours at the applicable rate for September 5, 1961, for the violation at Iselin Shop, where no telegrapher is employed; and, because of these violations, Carrier shall compensate Telegrapher J. L. Pilkinton, employed at Artesia, for a call September 5, 1961, for the violation at Artesia.

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

The claims here involved were filed and handled in the usual manner up to and including the highest officer of the Carrier and have been declined.

While the nature of the violation of the Agreement was the same or similar in each of the three cases, because of the different locations involved, etc. the Employes will set forth facts relative to each case.

Case No. 1

Tamms, Illinois, is a station on the Northern Division of the railroad, approximately 130 miles south of St. Louis, Missouri. There are two seven-day positions covered by the Agreement at Tamms, that of 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. Venice is at a 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. Tolson and Venice are about four miles distant from each other; Tolson on the southern outskirts of East St. Louis, Illinois and Venice just north of East St. Louis, Illinois. The Carrier maintains freight yard facilities at both Venice and Tolson. For practical purposes, as to 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 is located in the south yard at Tolson. There are two seven-day positions classified as telegrapher at this station, the first shift working from 7:00 A. M. to 3:00 P. M. and the second shift from 3:00 P. M. to 11:00 P. M. The telegraphers at Tolson normally handle the communication work for both Tolson and Venice.

The claims here involved arose out of Carrier's action of requiring or permitting a clerk at Tamms to transmit messages to a clerk at Venice. The messages involved are communications of record and are reproduced in the claims presented by the General Chairman to the Superintendents. (Please see ORT Exhibits 1 and 5).

There were two claims handled on the property in this Case No. 1, combined here. Handling on the property is depicted in ORT Exhibits 1 through 9, attached hereto and made a part hereof. It is noted that the General Chairman's final letter to the Contract Counselor relative the two claims was made in reference to both claims. Therefore, ORT Exhibit 9 represents the handling of both claims.

A SUSTAINING AWARD WOULD BE WASTEFUL IN MAN-POWER AND REVENUES, AND REQUIRE THE EMPLOYMENT OF TOTALLY UNNECESSARY EMPLOYEES AND PROMOTE IN-EFFICIENCY.

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. The telephone conversations referred to in this claim took only a matter of seconds. 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 claims are contrary to the Agreement, the accepted practice and application.

The claims are 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. Schuly
Executive Secretary

Dated at Chicago, Illinois, this 14th day of January, 1964.