

Award No. 12116  
Docket No. TE-10940

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

David Dolnick, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS  
NORFOLK AND WESTERN RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk and Western Railway Company that:

1. Carrier violated the agreement between the parties when on November 21, 1957 it required or permitted an Assistant Yardmaster, not covered by the agreement, to handle (receive, copy and deliver) a message for a train at Kinney, Virginia, at a time when the operator was off duty.

2. Carrier shall compensate T. D. Carter, Operator-Clerk at Kinney, in the amount of a minimum call payment.

**EMPLOYES' STATEMENT OF FACTS:** The agreements between the parties are available to your Board and by this reference are made a part hereof.

Kinney, Virginia, is a station located near the southern boundary of the city of Lynchburg and is essentially the control center of the Carrier's yard operations at that point. For forty years or more, the Carrier maintained a 'round-the-clock communication office at Kinney, but due to some changes in operation about sixteen years ago, the three telegraphers' positions there were abolished. In October of 1955 the Carrier made another change in operations, moving practically all of its yard operations from Island Yard (Lynchburg) to Kinney. Instead of providing continuous communication service, it established only one position of Operator-Clerk, with assigned hours 11:30 P. M. to 7:30 A. M., seven days a week. At the time cause for this claim arose, the assigned hours were 12:30 A. M. to 9:30 A. M. (one hour meal period). The regularly assigned incumbent of the position was telegrapher T. D. Carter.

At 4:12 P. M. on November 21, 1957, Yardmaster J. E. Buckley at Kinney received, copied and delivered the following message:

"Crewe Nov 21 1957

C&E Extra 2152-2153 East, Kinney

Do not cut off head engine at Phoebe continue to Crewe.

R F Dunlap"

|      |      |      |      |
|------|------|------|------|
| 652  | 4827 | 5660 | 6824 |
| 653  | 4879 | 5702 | 6903 |
| 700  | 4889 | 5777 | 6929 |
| 752  | 4922 | 5866 | 6959 |
| 1708 | 5079 | 6007 | 6996 |
| 2679 | 5109 | 6159 | 7031 |
| 3003 | 5120 | 6363 | 7066 |
| 4464 | 5318 | 6364 | 7076 |
| 4512 | 5404 | 6487 | 7153 |
| 4585 | 5416 | 6758 | 7154 |
| 4643 | 5468 | 6778 | 7401 |
| 4733 | 5564 | 6779 | 7402 |
| 4791 | 5619 | 6788 | 7403 |

The Carrier desires to point out that the jurisdiction of the Third Division, National Railroad Adjustment Board, is limited to the matter of interpretation or application of agreements and that such Division has no jurisdiction whatsoever to write any agreement or to read any non-existent rule into an agreement, which it would be doing if it sustained the instant claim. Denial of the claim in the instant case is, therefore, respectfully requested.

All material used in this submission was presented to or was known by the Employees while this claim was being progressed on the property.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The facts are not in dispute. On November 21, 1957, the Dispatcher at Crewe, Virginia, telephoned the Yardmaster at Kinney, Virginia, and asked him to deliver the following message to Extra 2153-2152 East at Kinney Yard. The Yardmaster at Kinney Yard copied and delivered the following message:

“Crewe, Va., Nov. 21, 1957

C&E Extra 2153-2152 East, Kinney

Do not cut off head engine at Phoebe continue to Crewe.

R. F. Dunlap”

There was no telegrapher on duty at Kinney at the time. The regularly assigned telegrapher went off duty at 9:30 A. M. and the message came through at 4:12 P. M. It is Petitioner's position that Claimant, who was the regular assigned Operator-Clerk, be paid for a minimum call.

Petitioner argues that this was a message “related directly to the operation of the train through and beyond Kinney Yard.” In support thereof it cites Awards 10425, 10525, 10823 and 11306.

There are a number of Awards involving the same parties and the same Agreement. In Award 10823 we held that messages concerning the operation of

trains or the safety of persons and property were messages of record and constitute work generally reserved to telegraphers. This principle was also enunciated in Awards 10425, 10525 and 11306. What constitutes messages of record depends upon the facts and circumstances in each case.

Carrier admits that the Yardmaster copied and delivered the message above quoted. The message involved the operation of the train. It is a message which by its very nature should and was made of record. As such, the work is reserved to telegraphers. Award 11805.

**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 Carrier violated the Agreement.

**AWARD**

Claim is sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of THIRD DIVISION

**ATTEST:** S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1964.