

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 that:

1. Carrier violated the agreement between the parties when, on September 22, 1958, it required or permitted an employe not covered by the agreement to transmit a message at Bonsack, Virginia.
2. Carrier shall compensate extra telegrapher C. A. Burford in the amount of a day's pay.

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

Bonsack, Virginia is a station on the Norfolk Division of this Carrier's lines. Prior to May 16, 1958, there was an agent and operator position at this station 8:00 A.M. to 5:00 P.M., a five-day position with Saturdays and Sundays as rest days. The position was abolished and the station closed after the close of business May 15, 1958.

At 3:49 P.M., Monday, September 22, 1958, the Timekeeper of Extra Force 30-S, at Bonsack, transmitted the following message:

"Bonsack, Va. Sept. 22, 1958

J. W. Neikirk
W. S. Clement - Roanoke

Progress report. Eastbound main track Mile Post 250-252 extra force No. 3-S worked 36 laborers surfaced 7020 feet main line rail surfaced one No. 10 and 1 No. 20 turnout. Renewed 56 No. 4 and 5 main line ties.

Clayton R. Roberts, Foreman"

The above message was transmitted by use of the company telephone and was transmitted to an operator in "GM" Telegraph Office at Roanoke, Virginia. The operator in "GM" received and copied the message and arranged

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.

The Carrier's position as set forth in this submission clearly proves there is no merit whatever to the Employees' claim in this case.

Denial of the claim in its entirety is respectfully requested.

(Exhibits not reproduced.)

OPINION OF BOARD: No telegrapher was assigned to the Bonsack, Virginia station. On September 22, 1958, the Timekeeper of Extra Force 30-S, at Bonsack transmitted the following message:

"J. W. Neikirk
W. S. Clement - Roanoke

Progress report. Eastbound main track Mile Post 250-252 extra force No. 3-S worked 36 laborers surfaced 7020 feet main line rail surfaced one No. 10 and 1 No. 20 turnout. Renewed 56 No. 4 and 5 main line ties.

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Petitioner contends that this work is reserved to telegraphers under Rule 1 of the Agreement. This rule does not define the work which is reserved to telegraphers. Since the message is not concerned with the operation of trains or the safety of persons and property, Petitioner is required to show that progress report messages were historically and traditionally reserved to telegraphers. Petitioner has failed to establish by a preponderance of evidence that this type of work is reserved to telegraphers either through custom, practice or tradition.

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 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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

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.