

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

David Dolnick, Referee

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**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 (Virginian Lines) that:

1. Carrier violated the agreement between the parties when on May 12, 1960, it required or permitted a train conductor to "OS" his train and transmit other reports to the train dispatcher from Suffolk, Virginia at a time when the operator was off duty.

2. The Carrier shall compensate W. N. Foster, operator at Suffolk, Virginia in the amount of a minimum call payment.

**EMPLOYES' STATEMENT OF FACTS:** The Agreement between the parties, effective September 1, 1945, as amended and supplemented, is available to your Board and by this reference is made a part here.

Suffolk, Virginia is a station on the Norfolk Division. At this station there is a position of Telegrapher-Clerk with assigned hours 8:00 A. M. to 5:00 P. M. (1 hour meal period), assigned rest days Saturday and Sunday. Prior to December 1, 1959, there were two shifts at this station providing communication service over a period of 16 hours each day. The second shift was abolished.

On Thursday, May 12, 1960, shortly after 6:00 P. M., Conductor E. W. Estes, in charge of Work Extra 635, used the telephone at Suffolk to OS his train, advise the Dispatcher when he went on duty at that date and to receive a "call" for duty on the following day. He reported to the Train Dispatcher that his train arrived at Suffolk and was in the clear of the main track at 5:50 P. M., he reported to the Train Dispatcher that his crew went on duty at 4:00 A. M., May 12, and received from the Train Dispatcher a notice or call to go on duty at 6:00 A. M., on May 13.

Claim was filed and handled up to and including the highest designated officer of the Carrier and has been declined. Correspondence reflecting this handling on the property is attached hereto as ORT Exhibits No. 1 through 8.

**POSITION OF EMPLOYES:** The work here involved is reserved to employees holding seniority under the Telegraphers' Agreement.

changed between Conductor Estes and Dispatcher Matthews on this occasion was of a nature that could be held to be communication work in controlling the movement of trains. Similar circumstances were involved in Award No. 58, Docket No. 58, Special Board of Adjustment No. 305, in which case the STATEMENT OF CLAIM reads in pertinent part as follows:

"1. Carrier violated the Agreement between the parties when on May 22, 1958, it required or permitted Conductor Hoch to transmit to train dispatcher Upson at Pueblo, Colorado, the 2704 report of Work Extra BDC-4, also message that BDC-4 was tied up on house track at Ransom, Kansas, and could not be moved or blocked in, in addition to a work order message for the following day that the Extra would work between Arnold and McCracken on May 23, 1958."

In denying the claim involved in that case, Special Board of Adjustment No. 305 held that:

"We are convinced that the information transmitted by use of the telephone from Conductor Hoch to the dispatcher at Pueblo does not fall within the class of messages defined by the National Railroad Adjustment Board as communication of record, but was merely information for which there was no requirement that a record be made. See Award No. 8, Special Board of Adjustment No. 305."

Third Division Awards 7825 and 9953 also involved claims based upon similar circumstances which were denied by your Board.

The Carrier has shown that the basis for the claim submitted to your Board is not the same as that handled on the property; that the conductor did not report a part of his work report to the dispatcher as alleged by the Employees during the handling of the claim on the property; that the conductor did not "OS" his train and transmit other reports as alleged by the Employees in submitting this case to your Board; that it has been the custom, tradition and practice for as many as 48 years for conductors to do what was done by the conductor involved in this case and therefore the work on which the claim is based is not work reserved exclusively to telegraphers by custom, tradition or historical practice. Therefore, the Carrier submits it has shown that what Conductor Estes did in this case did not constitute a violation of the Telegraphers' Agreement and the claim is without merit.

Denial of the claim in its entirety is 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 claim submitted to the Board alleges that the Carrier required or permitted a train conductor to "OS" his train and transmit other reports to the train dispatcher.

The Carrier contends that this is a fatal variance from the claim that was filed and handled on the property, which was to the effect that the Carrier required or permitted the conductor to report part of his work report to the dispatcher.

In view of our prior awards, concerning these same parties, which make a distinction between types of communications handled by telephone, the Carrier may well have been prejudiced by the change in the claim.

This being so, the claim will be dismissed.

**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 claim will be dismissed in accordance with the Opinion of Board.

#### AWARD

Claim dismissed.

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.