

Award No. 12151
Docket No. TE-10006

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Kieran P. O'Gallagher, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

1. Carrier violated the terms of the Agreement between the parties when on April 28, 1956, it required or permitted Conductor Purdue, an employe not covered by the Agreement, to handle (receive, copy and deliver) Train Orders No. 724 and 725, direct from the Train Dispatcher.

2. Carrier violated the rules of the Telegraphers' Agreement when on May 18, 1956, it required or permitted Conductor Carter, an employe not under the Agreement, on Train No. 56, to handle (receive, copy and deliver) Train Order No. 731 at 11:03 P. M. at Ringgold, Virginia, direct from the Train Dispatcher.

EMPLOYEES' STATEMENT OF FACTS: On April 28, 1956, Conductor Purdue on Train No. 56 copied Orders Nos. 724 and 725 at 11:30 P. M. and 11:34 P. M. respectively, by means of a telephone located at Ringgold, Virginia, from the dispatcher. Copies of the two orders read as follows:

Form 31

Order No. 724

Ringgold, Virginia

C&E No. 56

April 28, 1956

Order No. 722 is annulled. No. 56 Fifty Six Eng 7 hold main track meet No. 11 Eleven Eng. 6877 at South Boston.

R.T.N.

Repeated 11:30 P. M.

Perdue No. 56 Complete 11:30 P. M.

CONCLUSION

Carrier has proven that:

(a) Claims which the ORT here attempts to assert are **not** the claims presented to the Carrier and handled in the usual manner as required by the Railway Labor Act, Board Rules of Procedure, and the effective agreement. They are, therefore, barred, and the Board has no jurisdiction over them and should, therefore, dismiss them for want of jurisdiction.

(b) Without prejudice to its position that the Board has no jurisdiction over the claims which the ORT here attempts to assert, and without waiving any of its rights under the law, the effective agreement or Board Rules of Procedure, Carrier submits that the effective Telegraphers' agreement has **not** been violated as alleged, that the point at issue has heretofore been conceded by the ORT, that prosecution of the claims is nothing more than an effort by the ORT to establish new rules and working conditions by an award of the Adjustment Board rather than by following the processes of collective bargaining, and that, in such situation, the Board cannot sustain the claims except by disregarding the plain, unambiguous language of the agreement in evidence, which it has heretofore recognized that it would not do.

(c) While claims should be dismissed for want of jurisdiction, the Board has no alternative other than make a denial award in event it assumes jurisdiction and considers the claims under agreement rules.

OPINION OF BOARD: This case is the same in all material respects as in Docket No. TE-9988, Award No. 12150. We adopt the opinion therein as determinative of the issues in this case.

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 Employes involved in this dispute are respectively Carrier and Employes 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 29th day of January 1964.