

Award No. 12156
Docket No. TE-10428

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 Scope Rule (Rule 1) of the Telegraphers' Agreement when on the 12th day of February, 1957, it caused, required or permitted Conductor Bullen of Train No. 68, an employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 89 at Boyd, Tenn.

2. Carrier shall compensate Mr. W. H. Faddis, senior idle extra telegrapher, Knoxville, Division Seniority District, on February 12, 1957; and/or the senior employe under the Telegraphers' Agreement idle or otherwise entitled to perform the aforementioned work, name of employe to be determined by a joint check of Carrier's records; for one day (8 hours) at the rate of \$1.98 per hour (minimum pro rata telegrapher (telephoner) rate on the Knoxville Division) for the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: At Boyd, Tennessee, until about 30 years ago, the Carrier maintained a 24-hour train order office. The positions at Boyd, Tennessee, were covered by the Telegraphers' Agreement and the employes had the classification of Telegrapher. During the years when these positions were in existence, the occupants performed all the communication work in the handling of messages, orders and reports of record, and all other station work at the station during their assigned hours.

On February 12, 1957, train No. 68 arrived at Boyd, Tennessee. Conductor Bullen used the telephone to contact Train Dispatcher and the Train Dispatcher dictated train order No. 89, which was copied by Conductor Bullen at Boyd, Tenn. Train Order No. 89 reads as follows:

"Form 19

SOUTHERN RAILWAY SYSTEM

Knoxville, Tenn.

Order No. 89

Feb. 12, 1957

In Third Division Award 6828, Referee Messmore, it was held:

"The authority of this Division is limited to interpreting and applying the rules agreed upon by the parties. * * *

"The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance.' See Awards 3528, 6018, 5040, 5976."

The Board, being restricted by law, and having heretofore recognized that it is without authority under the law by virtue of which it functions to grant new rules or modify existing rules such as here demanded by the ORT, cannot, therefore, sustain the claim here presented.

CONCLUSION

Carrier has shown conclusively that the Scope Rule of the effective agreement in evidence has not been violated. In fact, that there has not been any violation of any provision contained in the Telegraphers' Agreement. Also, that the ORT has long since conceded the point here at issue, and that prosecution of the claim and demand here made constitutes nothing more than an effort by the ORT to establish a make-work scheme designed to create work and employment for telegraphers. No Board or any responsible person is going to be a party to establishing such a scheme.

On the record, the Board is left with no alternative except to make a denial award.

(Exhibits not reproduced.)

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.