

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 5th day of February, 1957, it caused, required or permitted Conductor McGhee of Extra 4220, an employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 110, at Pioneer, Tennessee.

2. Carrier shall compensate Mr. C. L. Graham, senior idle telegrapher, Knoxville Division Seniority District, on February 5, 1957 and/or the senior employe under the Telegraphers' Agreement, idle or otherwise, entitled to perform the aforementioned service, name of person 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.

EMPLOYEES' STATEMENT OF FACTS: At Pioneer, Tennessee, until about 1930, the Carrier maintained a station. There was one position covered by the Telegraphers' Agreement with an assigned Agent-Telegrapher at this location. During the years when this position was in existence, the occupant thereof performed all the communication work in the handling of messages, orders and reports of record, as well as the other station work.

Due to excess amounts of water in the soil, slide conditions prevailed at the Pioneer tunnel. Carrier was well aware of these conditions and had men and equipment present to clear the tracks of sliding obstacles. These facts are not disputed by the Carrier that it knew of the slide condition before Extra 4220 was permitted to leave its terminal station. The Carrier with this information in mind made no effort to have a telegrapher present at Pioneer, Tennessee, on the arrival of Extra 4220 to copy the necessary order for its return to Lake City, Tennessee. Conductor McGhee of Extra 4220 copied train order No. 110 at Pioneer. The train order read as follows:

rates of pay, rules, or working conditions * * *." (Section 3, First (i) of the Railway Labor Act). The Board cannot sustain the claim here presented without disregarding the evidence presented, and the agreement between the parties and practices thereunder, and attempting to impose upon the Carrier conditions of employment and obligations with respect thereto not agreed upon between the parties in the normal process of collective bargaining as outlined in the Railway Labor Act. The Board has heretofore held that it would not take such action.

In Third Division Award 6007, Referee Messmore, it was held:

"In determining the rights of the parties, it is our duty to interpret the applicable rules of the parties' agreement as they are written. It is not our privilege or right to add thereto. See Award 4435."

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 3523, 6018, 5040, 5976."

The Board, having heretofore recognized that it is without authority under the law to grant new rules or modify existing rules, as the ORT here demands, must, as the only alternative, make a denial award.

CONCLUSION

Carrier has proven that there has not been any violation of the effective Telegraphers' Agreement, as alleged, and, further, that the point at issue has heretofore been conceded by the ORT.

The Board, being without authority under the law to grant new rules or modify existing rules, as here demanded by the ORT, has no alternative but to hold that there has not been any violation of the effective Telegraphers' Agreement, and 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 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 Agreement was not violated.

Claim of senior extra telegrapher, Knoxville Division, for pay for one day because the conductor of train No. 50 copied train order No. 566 at Volga, N.C., where there is no telegraph or telephone office, on January 1, 1952. Claim was declined in letter addressed to the ORT's General Chairman on April 11, 1952, copy of which, marked Carrier's Exhibit C, is attached hereto and made a part hereof.

Claim of Telegrapher J. A. McLin, Coapman, Ill., for pay for a minimum call because the conductor on work extra 2067 copied train order No. 241 at Belleville, Ill., where there is no telegraph or telephone office, on April 14, 1955. Claim was declined in letter addressed to the ORT's General Chairman on July 7, 1955, copy of which, marked Carrier's Exhibit D, is attached hereto and made a part hereof.

Claim on behalf of senior extra telegrapher, Knoxville Division, for a day's pay because the conductor of train extra 2141 copied train order at Hutsell, Tenn., where there is no telegraph or telephone office, on May 7, 1955. Claim was declined in letter addressed to the ORT's General Chairman on October 4, 1955, copy of which, marked Carrier's Exhibit E, is attached hereto and made a part hereof.

Claim on behalf of an unnamed telegrapher, Knoxville Division, for pay for eight hours at his straight time rate of pay because the conductor on train No. 92 copied a train order at Poplar, Tennessee, where there is no telegraph or telephone office, on May 3, 1956. Claim was declined in letter addressed to the ORT's General Chairman on October 4, 1955, copy of which marked Carrier's Exhibit F, is attached hereto and made a part hereof.

In accepting Carrier's decisions in the above referred to cases, which established precedents, the ORT recognized the interpretation placed upon the plain language of the agreement by Carrier.

The evidence presented can lead to but one conclusion, that the point here at issue has heretofore been conceded by the ORT.

(3)

**CLAIM REPRESENTS A DEMAND BY THE ORT THAT
THE BOARD ESTABLISH A NEW RULE OR WORKING
CONDITION BY AN AWARD OF THE ADJUSTMENT
BOARD.**

The evidence presented herein proves without question that there has not been any violation of the effective Telegraphers' Agreement as alleged, and leads to the conclusion that the claim which the ORT here attempts to assert represents nothing more than a demand that the Adjustment Board grant employees of the telegraphers' class or craft a rule or working condition which it has heretofore been unable to obtain in negotiations, and thus change the terms of the Telegraphers' Agreement. That the Board does not have authority to grant such a rule, or change the effective agreement is evidenced by the fact that its authority is restricted to deciding " * * * disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning

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.