

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 Agreement, when on February 28, 1957, it caused, required or permitted Conductor C. W. Green, an employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) a message of record pertaining to train movements at Rudd, North Carolina.

2. Carrier shall compensate R. L. Hendry, idle extra telegrapher, or senior idle extra telegrapher, Danville Division Seniority District, on February 28, 1957 for one day (8 hours) at the rate of \$1.96 per hour, minimum pro rata telegraphers (telephoners) rate on this seniority district, for the violation aforesaid.

EMPLOYES' STATEMENT OF FACTS: On February 28, 1957, at 12:10 P.M., Conductor C. W. Green, on Extra C&NW 7, copied the following message of record from the dispatcher by use of a telephone at Rudd, North Carolina. There was no telegrapher employed at Rudd on February 28, 1957. The message of record read as follows:

"Rudd N.C. Feb 28, 1957

To C&E Extra C&NW 7, at Rudd, N.C.
Go to Reidsville ahead of No. 136 and No. 156.

Copied 12:10

/s/ RTN
C. W. Green, Condr, (Operator)"

Upon receipt of this message directing the movement of his train Conductor Green copied the message and then instructed his engineer to proceed in accordance with the directive of the message. The dispatcher also made a copy of the message sent to Conductor Green.

Claim was made in behalf of R. L. Hendry, the idle extra employe on

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 the limitations placed upon it by the law, and the fact that it is without authority to grant new rules or modify existing rules such as here demanded by the ORT, cannot do other than make a denial award.

CONCLUSION

Carrier has proven that:

(1) The effective Telegraphers' Agreement has **not** been violated as alleged and claim is not supported by it.

(2) The point here at issue has heretofore been conceded by the ORT.

(3) Claim is nothing more than a demand by the ORT that the Board establish a new rule or working condition by an award of the Adjustment Board.

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 had not been any violation of the effective agreement in evidence and make a denial award.

All evidence submitted in support of Carrier's position is known to employe representatives.

Carrier, not having seen the ORT's submission, reserves the right after doing so to present such additional evidence and argument as may be necessary.

(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.