

Award No. 12159
Docket No. TE-10493

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:

CLAIM NO. 1

1. Carrier violated the Agreement, when on February 21, 1957, it caused, required or permitted Mr. J. L. Gray, Sr., a train conductor not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 707 at Ruben, North Carolina Mile Post.

2. Carrier shall compensate R. L. Hendry, idle extra telegrapher or senior extra idle telegrapher, Danville Division Seniority District, on February 21, 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.

CLAIM NO. 2

1. Carrier violated the Agreement when on February 22, 1957, it caused, required or permitted Road Foreman of Engines Wilson, an employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 218 at Pelham, North Carolina.

2. Carrier shall compensate R. L. Hendry, idle extra telegrapher, or senior idle extra telegrapher, Danville Division Seniority District, on February 22, 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.

CLAIM NO. 3

1. Carrier violated the Agreement when on February 22, 1957 it caused, required or permitted Road Foreman of Engines Wilson, an employe not

covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 227 at Whittle, Virginia.

2. Carrier shall compensate R. L. Hendry, idle extra telegrapher, or senior idle extra telegrapher, Danville Division Seniority District, on February 22, 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.

CLAIM NO. 4

1. Carrier violated the Agreement when on February 27, 1957 it caused, required or permitted Road Foreman of Engines J. E. Lyerly, an employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) Train Order No. 218 at Pelham, North Carolina.

2. Carrier shall compensate R. L. Hendry, idle extra telegrapher, or senior idle extra telegrapher, Danville Division Seniority District, on February 27, 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:

CLAIM NO. 1

On February 21, 1957, at 5:40 A. M. at Ruben, North Carolina, Mr. J. L. Gray, Sr., Conductor of Train No. 255 received and copied the following train order:

"Form 19

Form 19

SOUTHERN RAILWAY COMPANY

Ruben, N. C.
Feb. 21, 1957

Train Order No. 707

To—C&E No. 255, at Ruben, N. C.

Order No. 706 is annuled. No. 252 Two Fifty Two Eng. 4233 meet No. 255 Two Five Five Eng. 4145 at Greensboro.

RTN

Made Complete Time 5:40 A. M.

CLAIM NO. 2

On February 22, 1957, Road Foreman of Engines Wilson, who was riding Train No. 58, received and copied Train Order No. 218 at Pelham, North Carolina. Train Order No. 218 read as follows:

"Form 19

Form 19

Pelham, N.C. Feb. 22, 1957

Order No. 218

To—C&E No. 58 at Pelham, N. C.

Order No. 211 is annulled. No. 154 one fifty four eng 4206 run

a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * *." (Section 3 First (i) of the Railway Labor Act). The Board cannot sustain the claim here presented unless it disregards the evidence presented and the agreement between the parties and practices thereunder, and attempts 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. If inequities among employes arise by reason thereof, this Division is without authority to correct them as it has not been given equity powers. In other words, we cannot make a rule or modify existing rules to prevent inequities thus created. Renegotiation thereof is the manner provided by the Railway Labor Act, which is the proper source of authority for that purpose. See Award 5703. See, also Awards 4439, 5864, 2491.

"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, cannot do other than make a denial award.

CONCLUSION

Carrier has presented evidence proving conclusively that there has **not** been any violation of the effective Telegraphers' Agreement as alleged, and that the point here at issue has heretofore been conceded by the ORT.

The Board, having heretofore recognized that it is without authority under the law to grant new rules or modify existing rules, as here demanded by the ORT, cannot do other than hold that there has not been any violation of the effective Telegraphers' Agreement 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 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.

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.