

Award No. 12167
Docket No. TE-10433

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 Rule 1, Scope, of the Telegraphers' Agreement, when on April 6, 1957, it caused, required or permitted Mr. Plummer, a train service employe not covered by the Telegraphers' Agreement, to communicate by telephone with the dispatcher and handle (receive, copy and deliver) Train Order No. 526 at Griffith, North Carolina, a blind siding.

2. Carrier shall compensate Mr. J. W. Smith, senior idle extra telegrapher, Columbia Division Seniority District, for one day (8 hours) at the rate of \$2.0750 per hour, minimum pro rata Telegraphers (Telephoners) rate on such seniority district, for the violation aforesaid.

EMPLOYEES' STATEMENT OF FACTS: On April 6, 1957 at 9:30 A.M., Conductor Plummer, on Train No. 73 while located at Griffith, North Carolina, received and copied the following train order from the dispatcher. Train Order No. 526 reads as follows:

"Form 19	At Griffith	April 6, 1957
Order No. 526		
To: C&E No. 73		

No. 156 one fifty six eng. 4141 wait at Fort Mill until 959 nine fifty nine am for No. 73 seventy three eng. 2131.

G.H.S.

Made complete	930 AM	Conductor Plummer operator."
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CONCLUSION

Carrier has proven by probative evidence that the Scope Rule of the agreement in evidence has not been violated nor has there been any violation of any other rule contained within the four corners of the effective agreement. Carrier has also shown by probative evidence that the ORT has long since conceded the point here at issue and that prosecution of the claim constitutes nothing more than a demand that the Board establish a rule and condition of employment for employes of the telegraphers' class or craft, and that under the Railway Labor Act, by virtue of which the Board functions, such an award cannot be made. The Board cannot be a party to establishing the make-work scheme which the ORT here attempts to create, and cannot therefore do other than 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 to, so make response thereto.

(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.