

Award No. 12170
Docket No. TE-10813

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 Telegraphers' Agreement, when on the 10th day of August, 1957, it caused, required or permitted Mr. Foster, a train conductor, an employe not covered by the Telegraphers' Agreement, to handle (receive, copy, and deliver) Train Order No. 612 at Vance, Tennessee.

2. Carrier shall compensate J. E. Matthews, senior idle extra employe, Knoxville Division Seniority District, on August 10, 1957, for one day (8 hours) at the rate of \$2.01 per hour (minimum pro rata telegraphers' (telephoners') rate on this seniority district) for the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: At Vance, Tennessee, until the installation of automatic block signals, the Carrier maintained a 24-hour train order office. The positions at this train order office were covered by the Telegraphers' Agreement with the classification of telegrapher. During the years when these positions were in existence the occupants thereof performed all the communication work in the handling of messages, orders and reports of record.

On August 10, 1957, at or about 1:30 P.M., Conductor Foster of Work Extra 4157 received and copied the following train order at Vance, Tennessee, by use of the telephone in order that he might have more time to get his train in the clear of train No. 74:

FORM 19

Vance, Tenn. Aug. 10, 1957

Order No. 612

To: C&E Work Extra 4157, at Vance, Tenn.

No. 74 seventy four eng 4252 wait at Carnegie until 301 three naught one P M for work extra 4157.

W.G.C.

MADE COMPLETE 1:30 P.M.

Condr. Foster (Operator)

"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."

CONCLUSION

Carrier has shown that:

- (a) The effective Telegraphers' Agreement was **not** violated as alleged, and the claim and demand here made by the ORT are not supported by it.
- (b) The point here at issue has long since been conceded by the ORT.
- (c) The absurd claim and demand which the ORT here attempts to assert amount to nothing more than a demand that the Board grant the employes a new rule or working condition by a Board award, something which the Board has no authority to do.

On the evidence presented, the Board is left with no alternative but to make a denial award as the claim and demand which the ORT here attempts to assert cannot be sustained.

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 as may be necessary for the protection of its interests.

(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.