

Award No. 12171
Docket No. TE-11083

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, Rule 1, when on the 30th day of October, 1957, it caused, required or permitted Conductor Styers, conductor train 65 that date, an employe not covered by the Telegraphers' Agreement, to handle, receive, copy and deliver train order No. 704 at Goldsboro, North Carolina.

2. Carrier shall compensate J. W. James, senior idle extra employe, Danville Division seniority district, on October 30, 1957, for one day (8 hours) at the rate of \$1.96 per hour (minimum pro rata telegraphers (telephoners) rate on this seniority division) for the violation aforesaid.

EMPLOYES' STATEMENT OF FACTS: Goldsboro, North Carolina is located on the Danville Division of the Eastern Lines of the Southern Railway System. The Southern Railway passenger trains go into the Atlantic Coast Line Passenger Station at Goldsboro, North Carolina, and the telegraph office at the station is manned by Atlantic Coast Line employes. Goldsboro Yard, which is a freight yard for the Southern Railway freight trains, is located approximately 6/10 of a mile from the Atlantic Coast Line Passenger Station. The Southern freight trains leaving Goldsboro, leave that Yard and proceed on the main line enroute to Greensboro, North Carolina, but do not approach within 2/10 of a mile of the Passenger Station. Not since the existence of the railroad has there been any evidence that freight trains have ever received train orders from the Atlantic Coast Line Passenger Station, but they leave the freight yard by special time table instructions. The special instructions found in the time table, effective in 1957, provide that:

"1. ADDITIONAL INITIAL AND CLEARANCE CARD STATIONS
(Rules 4 and 88 (c))

A train must receive a clearance card before leaving its initial station, except 65 at Goldsboro yard, 67, and 177 at Glenn, and 176 at Carrboro."

to recognize the obvious fact that there has not been any violation of the effective Telegraphers' Agreement and the demand here made is not supported by it 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 reply 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.