

Award No. 12229
Docket No. TE-10482

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad, that:

1. Carrier violated the terms of the Telegraphers' Agreement when on the 16th and 17th days of January, 1959, it permitted and required Clerk Hansen in the Assistant General Freight Agent's office at Orlando, Florida to transmit perishable diversion messages by use of the telephone to the perishable agent's office at Hamlet, North Carolina at a time when the telegraph office at Orlando was closed but employees assigned thereat were available for call service.

2. Carrier shall compensate Claimant T. A. Foster for a "call"—two (2) hours at the overtime rate of pay, each day, January 16 and 17, 1957, for the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: There is in full force and effect a collective bargaining agreement entered into by and between Seaboard Air Line Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employees or Telegraphers. The Agreement is by reference made a part of this submission as though set out herein word for word.

The dispute submitted herein involves interpretation of the collectively bargained Agreement, has been handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and is therefore properly submitted to this Board under the provisions of the Railway Labor Act, as amended, for award.

At the time this dispute arose at Orlando, Florida, there were two positions covered by our Agreement, as follows:

1. Ticket Agent-Operator, 8:00 A. M. to 4:00 P. M. owned by Claimant T. A. Foster.
2. Ticket Clerk-Operator, 5:00 P. M. to 1:00 A. M., owned by J. B. Oblinger.

Therefore, for these reasons, aside from other controlling features, the instant claims are without merit and should be denied.

In order to avoid congestion in the Perishable Diversion Agent's office at the closing time for diversions and also to allow sufficient time for further handling in event of errors and subsequent diversions, the prompt handling of such diversion orders is mandatory and it is for these reasons that the exclusive right of handling them has never been vested in the craft of telegraphers by either rule or practice.

In summary it is the Carrier's position simply that (1) neither by rule or practice has the exclusive right to handle perishable diversion orders been considered within the scope of the ORT Agreement and, (2) if this confirmation had been re-transmitted by the telegraphers it would have been done by the second shift operator during his regular tour of duty and not by Claimant on a call.

OPINION OF BOARD: Claimant T. A. Foster occupied the position of Ticket Agent Operator during the hours of 8:00 A. M. to 4:00 P. M. at Orlando, Florida. A Ticket Clerk Operator with the hours from 5:00 P. M. to 1:00 A. M. was also assigned to the station. On January 16, at about 4:00 P. M., Clerk Mrs. E. A. Hansen in the Traffic Department of the Assistant General Freight Agent at Orlando, Florida, received information from a shipper ordering diversion of 20 cars of citrus fruit from Orlando to other destinations. Mrs. Hansen requested Trainmaster E. M. Jordan to authorize Ticket Agent Operator Foster to work overtime in order to transmit these diversion messages to Hamlet Yard, North Carolina. This request was not granted, and Mrs. Hansen was directed to telephone the messages herself to Hamlet Yard. On January 17 at about 4:50 P. M. she transmitted by telephone 13 additional diversion messages. The confirmations of these transmissions of both dates were mailed to the Perishable Diversion Agent. Claim is made that Carrier violated the terms of the Telegraphers Agreement when it assigned Clerk Hansen to transmit the perishable diversion messages by telephone at a time when the telegraphic office at Orlando was closed, but the Agent Operator was available for call service.

Petitioner argues that the work handling communications at Orlando, Florida belongs exclusively to employees covered by the Telegraphers Agreement. It maintains that the Scope Rule set forth the class of positions which deals with communications; and since the work in question concerns messages of record, this work belongs to the Telegrapher Agent. It also asserts that since 1943 this type of communication was handled by the Telegrapher Agent on an overtime basis. It points out that when the Agent is not on duty the practice is for the clerk to send the diversion messages by means of telephone and then the forms are filed at the Telegraphers office for transmission at a later time. This practice was not followed in the instant case.

Carrier denies the claim on the grounds that these diversion messages were not concerned with train movements and, therefore, are not encompassed within the Scope Rule. It maintains that the transmission of diversion messages never was performed solely by Telegraphers, but at Orlando and at other points was work performed interchangeably by Telegraphers and Clerks.

We note that Carrier asserts a practice at Orlando and other points on the North and South Florida divisions for other than operators to send diversion information to the perishable diversion agents at Hamlet Yard during

the perishable season. The record, however, shows that since 1943 the Telegrapher Agent handled these messages on an overtime basis. Furthermore, we find that at Orlando during the perishable season when the agent was not on duty, it was the practice for the clerk to telephone the diversion information to Hamlet Yard, and then to file the form at the Telegrapher Agent's office for that employee to transmit the confirmation message. These long-standing practices point up that both parties regarded the transmission of messages as Telegrapher Agent work. Apparently the clerk took this view, too, for on January 16 when the Agent was still available, at about 4:00 P. M., she consulted with the Trainmaster for permission to authorize Claimant T. A. Foster to work overtime. She did not routinely take on this job when a Telegrapher Agent was available. We find, therefore, that when Clerk Hansen transmitted the diversion messages but failed to file the forms at the Telegrapher's office for the Agent's transmission, the established practice was violated. Even though the clerk relayed the message by telephone, the practice of filing the message at the Telegrapher Agent's office for the Agent to later confirm it, indicates a recognition that the work belongs to the Telegrapher. Under these circumstances, we hold that the Agreement was violated.

Although the claim is sustained in its first part, we do not find an adequate basis for compensation on a call basis for Mr. Foster as requested in the second part of the claim. The compensation is, therefore, denied.

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 of the parties was violated.

AWARD

Claim sustained as to Item No. 1; Item No. 2 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of February 1964.