

Award No. 12396
Docket No. TE-10450

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, 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 January 21, 22, 23, 24 and 25, 1957, it required Mr. J. W. Bann, Agent-Telegrapher, New Baden, Illinois, to suspend duties on his regular assignment at New Baden, Illinois, and required him to go to Albers, Illinois, and protect the duties of agent at Albers, Illinois, in addition to performing the duties of his regular assignment at New Baden, Illinois.

2. Carrier shall compensate Mr. Bann eight (8) hours' pay at his New Baden rate (\$2.10 per hour) for January 21, 22, 23, 24, and 25, 1957, the days he was required to handle the duties of the Agent at Albers, Illinois, in addition to his regular assignment at New Baden, Illinois.

3. Carrier shall also compensate Mr. Bann by paying him \$5.00 per day expenses for January 21, 22, 23, 24 and 25, 1957, account being taken away from his regular job and sent to another city to perform duties.

EMPLOYEES' STATEMENT OF FACTS: Albers, Illinois is located 5.1 miles from New Baden, Illinois. Both Albers and New Baden are one-man agencies. Mr. J. W. Bann is the regularly assigned agent-telegrapher at New Baden, Illinois, with a work week of Monday through Friday and assigned hours of 8:00 A.M. to 5:00 P.M. Saturday and Sunday are his assigned rest days. Mr. H. E. Claar is the regular assigned agent at Albers, Illinois. Mr. Claar began his regular assigned vacation on January 21, 1957. On that same day Chief Dispatcher F. I. Geddes instructed Agent Bann to perform the work of the agency at Albers, Illinois, in the absence of Mr. Claar. Mr. Bann was not simply transferred to Albers, but was required also to perform the agency work at New Baden during this five day period of January 21 through January 25, 1957 while Agent Claar of Albers was on vacation.

fact that its authority is restricted to deciding “* * * disputes between an employe or group of employes and 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, under the law, do what is here demanded by the ORT without disregarding the evidence presented and the agreement and practices thereunder, and attempts to impose upon the carrier conditions of employment and obligations with respect thereto which have not heretofore been agreed upon. 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. * * *

“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, being restricted by law, and having heretofore recognized the limitations placed upon it, cannot sustain the claim here presented.

CONCLUSION

Carrier has proven that:

(a) The effective Telegraphers’ Agreement has not been violated as alleged and the monetary demand here made is not supported by any provision therein.

(b) Sending the claimant from New Baden to Albers to work was not only in accordance with the provisions of the plain language of the agreement in evidence, but in accordance with practices thereunder.

(c) Part (3) of the claim was paid and that part of it is subsequently withdrawn by the ORT’s General Chairman. Why the ORT here attempts to again assert it only the ORT can say.

Claim, being without any basis, the Board cannot do other than make a denial award.

OPINION OF BOARD: H. E. Claar, the regularly assigned agent at Albers, Illinois, was absent on January 21, 22, 23, 24 and 25, 1957, because of a death in his family. Claimant, agent at New Baden, Illinois, 5 miles away, was assigned to and worked at Albers 1 hour each of those days within his regular 8 hour day. He received the higher of the two rates for all the time worked. He also received \$5.00 per day expenses in accordance with Rule 15.

Since he was paid the \$5.00 per day expense, there is no basis for claim 3.

The Organization claims that Bann, the Claimant, was suspended from work in violation of Rule 9 and is therefore entitled to 8 hours' pay for each day he was suspended from his work at New Baden.

Carrier asserts that Claimant was temporarily assigned to Albers in accordance with Rule 14.

The record does not indicate that there was anyone available to fill the temporary vacancy at Albers, nor does it allege that Claimant was obliged to absorb overtime.

The facts in this case are quite similar to those in Award 6737 (Shake) and we hold that award as controlling here.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of April 1964.