

**Award No. 12642**

**Docket No. TE-13448**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

**Lee R. West, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the St. Louis-San Francisco Railway, that:

1. Carrier violated its agreement with the employes represented by The Order of Railroad Telegraphers when on January 1, and January 2, 1961 it caused, required or permitted employes not covered by the Telegraphers' schedule to perform the work of a telegrapher at Pittsburg, Kansas.

2. Carrier shall now compensate Mr. H. M. Ferguson an amount equivalent to one day's pay at the time and one-half rate for each of the above noted dates, \$29.64 per day, a total of \$59.28.

**EMPLOYES' STATEMENT OF FACTS:** The current Agreement between the parties provides the following:

**"ARTICLE I**

(1) Employes, except train dispatchers, who are required by direction of officer in charge to handle train orders, block or report trains, receive or forward written messages by telegraph, telephone or mechanical telegraph machines, (defined as telegraphers, telephone operators, block operators, operators of mechanical telegraph machines, agent-telegraphers, agent-telephoners) agents, assistant agents, ticket agents, assistant ticket agents and car distributors, listed in appended wage scale, also tower and train directors, tower-men, levermen, staffmen, are covered by this Agreement and are hereinafter collectively referred to as employes, and when so referred to all are included."

The Agreement, last revised May 16, 1958, also lists three telegraphers' positions at Pittsburg, per the following:

duty at Pittsburg by Bell Telephone and told him to receive from the KCS the train numbers, lead units, calling times, names of KCS crews and the total number of cars in such trains. When the Yard Clerk in question requested such information from the KCS, the Trainmaster on the KCS called this Carrier's Night Chief Dispatcher at Fort Scott and gave him such information over the Bell Telephone.

There was a telegrapher on duty at Cherokee, Kansas, eight miles from Pittsburg, who handled train orders and passed information to and from train crews and the train dispatcher.

There is no evidence that any employee at Pittsburg was required on the claim dates to receive and forward written messages.

There is no evidence to support the Organization's charge that Yard Clerks made OS reports of arrival and departure times of KCS trains on the claim dates. In fact, Train Dispatcher W. V. Claybourn, Carrier's Exhibit A-3, states:

"On January 3rd, I did gather up the delay reports on these movements which had arrived here in the office and completed train sheet records on most of them."

It is the Carrier's position that the Employees' claim has neither merit nor Agreement support and should be denied in its entirety.

In Item 2 of its Statement of Claim to the Board, the Organization claims an amount equivalent to one day's pay at the time and one-half rate for each of the above noted dates. Under no circumstances is the Claimant entitled to pay at the time and one-half rate. The Board has consistently held that the proper rate of pay for work not performed is at the pro rata rate.

The claim is lacking in both merit and Agreement support and the Board is requested to find in favor of the Carrier and deny the claim in its entirety.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Organization bases the claim here involved upon work allegedly performed by clerks at Pittsburg, Kansas on January 1, 1961 and January 2, 1961. The Organization asserts that on these dates the clerks were pressed into service as telegraphers and, as such, reported trains to the dispatcher at Ft. Scott.

The Carrier denies that any such reports were made by clerks or that any act in violation of the agreement occurred as alleged.

We have searched the record carefully and we are unable to find any evidence therein to support the allegations made by the Organization that the clerks made train reports. The Organization has failed to meet its burden of proof. For this reason, the claim must be 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 has not been violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 19th day of June 1964.