Award No. 12645
Docket No. TE-11499

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, 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 that:

1. Carrier violated the terms of the Telegraphers' Agreement when and because on the 13, 14, 15 and 16 days of April 1958, it required and permitted conductors, a trainmaster, a road foreman of engines and an assistant superintendent to handle (receive, copy and deliver) train orders at Cecil, Alabama, 812.5 mile post, Alabama, and Chessom, Alabama.

2. Carrier shall be required to compensate Extra Telegraphers N. B. Barber and W. C. Castelow each for a day's pay at the applicable rate for April 13, 1958; N. B. Barber, W. C. Castelow and L. J. Beasley each a day's pay at the applicable rate for April 14, 1958; N. B. Barber a day's pay at the applicable rate for April 15, 1958; N. B. Barber and W. C. Castelow each a day's pay at the applicable rate for April 16, 1958, account the aforesaid violations.

EMPLOYES' STATEMENT OF FACTS: There was at all times involved herein, in full force and effect, a collective bargaining agreement between Seaboard Air Line Railroad Company, hereinafter referred to as Carrier or Management, and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was effective October 1, 1944, and it is on file with this Division. The Agreement is by reference incorporated into this submission as though set out herein word for word.

The Carrier operates a line of railroad between Americus, Georgia and Montgomery, Alabama, designated as Americus Subdivision. It is 139.1 miles in length. At Hurtsboro, Alabama, the line of railroad owned by Seaboard Air Line is crossed by railroad belonging to Central of Georgia Railway.

The Carrier operates a scheduled freight train, No. 85, which, on the morning of April 12, 1958, derailed and turned over twenty-nine cars of phosphate at Mile Post 812.5, which is located between Cecil and Chessom,

OPINION OF BOARD: There is no dispute between the parties as to the factual situation involved in this case. At approximately 6:10 A. M. on April 12, 1958, freight train No. 85, operating westward from Jacksonville, Florida to Clisby Park Yard, Montgomery, Alabama, derailed 29 cars at the 812.5 mile post, which is located 21.5 miles east of Clisby Park Yard, 1.4 miles east of Cecil, Alabama and 3.6 miles west of Chessom, Alabama. The line upon which the derailment occurred is a single track railroad. From the time of the derailment until the track was cleared at 2:10 P. M., April 16, 1958, 16 train orders directly related to clearing the derailment were copied by other than telegraphers at Chessom, 812.5 mile post and Cecil, Alabama. Telegraph operators are not employed at Chessom, 812.5 mile post, or Cecil. While the derailment was being cleared, two extra telegraphers were temporarily assigned to Hurtsboro, Alabama, 34.8 miles east of the point of derailment. Communication at either side of the derailment as well as at the scene, was provided by use of a portable telephone. Connection with the train dispatcher telephone circuit was made by simply affixing the connecting line of the portable telephone to the dispatcher's circuit located on telephone poles on the Carrier's right of way. The claims do not involve any such work as might have been performed by any of these employes on the day of the actual derailment, but do cover the four (4) succeeding days.

The Organization first bases its contentions on the Scope Rule of the agreement, which is quoted in the record and need not be transcribed in this opinion. It essentially lists the various categories of people encompassed by the agreement. It further relies on Rule 11 captioned "Emergency and Wreck Service". This rule simply establishes the compensation to be paid those employes utilized at the scene of the accident. We do not think it prerequisite for a final adjudication of the issue involved in this case, to comment at great length about these two rules, except to say that in our judgment neither rules goes to the core of the problem to be resolved. There is precedent that the Scope Rule is general in character and does not define the work which belongs exclusively to the telegraphers. (See Awards 6824, 10604).

The above rules, of course, must be read and interpreted in conjunction with other pertinent rules of the entire agreement. Rule 24 is the rule which we think is pertinent to the issue at hand. It reads as follows:

RULE 24 — HANDLING TRAIN ORDERS

> No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices **where an operator is employed** and is available or can be promptly located, except in emergency, in which case the operator will be paid for the call. . . ." (Emphasis ours.)

In this case, there was no operator employed at the locations mentioned in the claim. The intent and meaning of this rule appear obvious; it grants exclusive right to the employes covered by this schedule and train dispatchers to handle train orders at telephone and telegraph office where an operator is employed and is available or can be promptly located. However, in an emergency, someone not covered by the agreement may handle them, but the operator will nevertheless be compensated for the calls. These qualifications have been stated in a well delimited albeit positive way. If as the Organization contends, the Claimants should be paid whether or **not** an operator is employed at the station involved, that should have been in-

corporated and so specified in the rule. It has been the subject of controversy and of negotiation for several years, has indeed been an issue before this Board many times and the claim has been denied. The issue has been presented to this Board in other cases involving the exact same parties, in consequence whereof we hold the decisions made in those cases controlling and therefore must deny the claims. (Awards 10442, 10604, 10605, 10606, 10782).

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 19th day of June 1964.