Award No. 12699
Docket No. TE-10488

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, 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 Thursday, May 16, 1957, it caused, required or permitted Yard Clerk Ira Williams, Huntingburg, Indiana, to transmit a message of record, also to copy a message of record, using the telephone to communicate, from Operator C. M. Benham, Princeton, Indiana, pertaining to pick up and set out of train No. 57 at Huntingburg, Indiana, May 16, 1957.

2. Carrier shall compensate L. R. Merideth, Clerk-Telegrapher, Huntingburg, Indiana, for one (1) hour and twenty (20) minutes under Rule 10, at the rate of one and one-half times the pro rata rate of $2.15 per hour, total $4.30.

3. Carrier shall also compensate L. R. Merideth, under Rule 10, for each day hereafter that similar violation occurs.

EMPLOYES' STATEMENT OF FACTS: Huntingburg, Indiana, is a two shift telegraph office. The first shift is assigned Tuesday through Saturday, 6 A. M. to 2 P. M., with rest days of Sunday and Monday. The second shift is assigned Thursday through Monday, 7 P. M. to 3 A. M., with rest days of Tuesday and Wednesday. The office is closed from 2 P. M. to 7 P. M. and from 3 A. M. to 6 A. M. daily.

L. R. Merideth is the regular assigned second shift clerk-telegrapher at Huntingburg, Indiana. On May 10th, 1957, the following message of record was issued by trainmaster P. M. Wallis, Huntingburg, Indiana:

"R. A. Wharton — Trainmaster — Princeton, Ind.
J. P. Mumford, Superintendent, Louisville, Ky.

Please see that information on No. 57 is given this yard office soon as No. 57 is out of Princeton. Orig RAW Copy JPM

P. M. Wallis 10:55 A. M."

"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 6228, 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 having heretofore recognized the fact that it is without authority under the law, by virtue of which it functions, to grant new rules or modify existing rules as the ORT here demands must, as the only alternative make a denial award.

CONCLUSION

Carrier has proven that there has not been any violation of the effective Telegraphers' Agreement as alleged, and that the claim which the ORT here attempts to assert is not supported by it; also that the ORT has long since conceded the point here at issue.

The Board being without authority to grant new rules or modify existing rules such as here demanded by the ORT has no alternative but to hold that the effective agreement has not been violated, and make a denial award.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim alleges violation of the effective Agreement between the parties because a yard clerk at Huntingburg, Indiana, transmitted and received information by telephone on May 16, 1957 which it is alleged constituted the receipt and transmission of messages of record required by the Agreement to be assigned to employes coming under the Telegraphers' Agreement. As remedy, there is demanded payment of one hour and twenty minutes at the rate of one and one-half times the pro rata rate to Clerk Telegrapher L. R. Merideth who was one of two Clerk-Telegraphers regularly scheduled, but neither of whom was then on duty. The Petitioner also demands compensation for Clerk-Telegrapher Merideth "for each day hereafter that similar violation occurs".

The Scope Rule here involved is a general one, listing work only by general occupational designation, containing no job descriptions or guarantees of assignment to specific tasks. It has been well-established by this Board that under such provisions, we shall be guided in the determination of work-usurpation claims, by the general criterion of whether the disputed work belongs exclusively to Claimants by tradition, custom and practice.

In the case of Telegraphers, the problem of application of this criterion has been enormously complicated by the advent of the telephone and its use in situations in which telegraphy once was the sole means of communication. The telephone is widely accessible to all types of employes; it requires no specialized skill for its use; it is a versatile and ready adjunct to the work of a variety of employes. Its wide and casual use has unavoidably blurred the line that once clearly set apart the specialized craft of communication from other types of work.

The Agreements between the Telegraphers and the Carriers — as does the one here — have adapted themselves to the presence of the telephone in two ways. One of these is by their recognition in the Scope Rule of users of the telephone as a class of employes covered by the Agreement, i.e., "telephone operators (except telephone switchboard operators)."

This is not a declaration that when the telephone is used, it is a covered employe who must use it. Many other crafts of employes use telephones incidentally as a necessary and convenient part of their duties. Our guide for exclusivity of assignment continues to be the history of traditional and customary practices, inasmuch as the Rule still remains a general one, the use of the telephone for the specific tasks claimed, now being included as one of the subjects of such examination by this guide-line.

The other adaptation of the Agreement to the advent of the telephone, and the one respect in which it explicitly assures specific assignment to the constituents of the petitioning Organization, is in respect to "train orders", covered by Rule 31 together with the interpretive letter of October 19, 1929 (the latter on page 42 of the Agreement).

The work in issue here did not involve train orders because it did not govern or direct the movement of a train. Reverting then to the criteria of tradition and custom, the record shows evidence by the Carrier, not refuted by Petitioner's evidence, that the claimed work had been done for many years by other employes, including the yard clerk who sent and received the subject messages.

The Petitioner's claim must, therefore, 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 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 2nd day of July 1964.