

Award No. 12700
Docket No. TE-10812

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 Rule 1, Scope, of the Telegraphers' Agreement when on August 13, 1957, it caused, required or permitted Ticket Clerk Arrington, an employe not covered by the Telegraphers' Agreement, to perform the work of transmitting communications of record by telephone from Ticket Office, Hendersonville, North Carolina to the Operator at Saluda, North Carolina.

2. Carrier shall compensate Telegrapher L. D. Hester, senior idle extra telegrapher, Asheville Division Seniority District, one day's pay, eight (8) hours' pro rata rate of pay prevailing on Asheville Division for Clerk-Telegrapher, account violation as set forth herein.

EMPLOYEES' STATEMENT OF FACTS: At Hendersonville, North Carolina there are assigned under the Agreement two positions of agent-telegrapher and clerk-telegrapher, both of which work in a freight station which is located across the tracks and a public street, approximately 500 feet from the passenger station. At the passenger station a clerk by the name of Arrington, on August 13, 1957 about 9:40 P.M., communicated by telephone with Telegrapher Hall located at Saluda, North Carolina and transmitted the following messages:

"Hendersonville, N. C.
Aug. 13, 1957

To J. P. Sweeney N.Y.C.
New York, New York

One coach seat NYC train No. 51 New York to Buffalo Monday
Aug. 26th JS 505

/s/ Cooper"

The second message sent was as follows:

transmitting other communications necessary to the movement of trains, provided such train orders and communications are handled between the train dispatcher and an employe covered by this agreement."

In letter dated May 22, 1958, the ORT served another Section 6 Notice requesting incorporated into the Telegraphers' Agreement the following rule:

"All communications governing the movement of trains shall be by train order issued by a train dispatcher and delivered to train and engine crews by the appropriate employe employed under the Carrier's rules and working conditions agreement with the representative of Station, Tower and Telegraph Employes. No train order shall be countermanded or modified by radio or any other means except by a superseding train order handled as required by this rule. All communications reporting upon the movement or expected movement of trains or governing the movement of other track vehicles shall be handled in writing and only by and through employes authorized to handle train orders under this rule. In any case of violation of this rule all employes who would have handled the communication had this rule been observed and all employes who were required to handle a communication in violation of this rule shall be paid an additional day's pay at the rate of his position."

In both proposals, the ORT sought a contract provision conferring upon employes of the telegraphers' class or craft a monopoly on the handling of train orders, lineups, so-called reports of record and other so-called communications. In both proposals, the ORT requested that the Carrier agree to confer such rights upon the employes. It sought a right which it recognized employes of the telegraphers' class or craft did not have under the agreement. Anyone familiar with labor relations matters knows full well that neither the employes nor their representatives, in making proposals for rules, ask for concessions which have already been granted them. It is simply not done. Thus, in the two proposals, the ORT recognized the obvious fact that monopolistic rights to the handling of so-called messages or reports of record had not been granted telegraphers by any rule in any agreement. The evidence is therefore conclusive that the ORT has conceded the point here at issue.

CONCLUSION

Carrier has shown that:

- (a) The effective Telegraphers' Agreement was not violated, and claim and demand are not support by it.
- (b) The point here at issue has long since been conceded by the ORT.

On the record, the Board is left with no alternative but to make a denial award.

OPINION OF BOARD: The claim alleges violation of the Agreement when a ticket-clerk on duty at Hendersonville, North Carolina, telephoned a telegrapher at Saluda, North Carolina, requesting that two space wires be sent, which the latter accordingly dispatched.

It is undenied that two telegraphers were employed at the time, at the freight office at Hendersonville, located approximately 500 feet from the passenger station. It is also conceded that one of these, a clerk-telegrapher, was on duty at the Hendersonville freight office at the time the messages were phoned to Saluda.

The Carrier admits that on earlier occasions when advance passenger space had been requested by Hendersonville from other offices, the ticket-clerk at Hendersonville phoned the telegrapher on duty at the Hendersonville freight office to send a request for the space to the involved ticket office. It states further, however, that whenever it had been necessary to request advance reservations and neither of the telegraphers was on duty at the freight office, the ticket-clerk mailed written requests to the telegraph office at Saluda for transmission to the points from which such space had been requested.

In respect to the specific events in issue here, the Carrier asserts that the Hendersonville ticket-clerk twice tried to contact by phone the clerk-telegrapher who was on duty at the freight station, but "was unable to do so", the second attempt having been made close to the end of the ticket-clerk's tour of duty at the conclusion of an extended eleven-hour day.

The record does not show contradiction or extenuating explanation by the Petitioner of the Carrier's statement that the clerk tried twice to reach Hendersonville telegrapher by telephone, but was unable to contact him. It is also uncontradicted that the second of these attempts occurred under circumstances which would have made it an unreasonable hardship for the clerk to have continued his efforts.

In the absence of any showing to the contrary, our response to the record must be that a good faith attempt was made to furnish the work to the Hendersonville telegrapher, that there was a good faith inability to do so, and that the Carrier was entitled to have its employe resort to the practicable alternative which was utilized.

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.