

Award No. 12704
Docket No. TE-11487

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. The Carrier violated the Scope Rule (Rule 1), and the Seniority Rule (Rule 18), of the Telegraphers' Agreement when on May 10, 1958, it caused, required or permitted Clerk W. D. Reams, an employe not covered by the Telegraphers' Agreement to perform the work of transmitting communications of record by telephone at Culpeper, Virginia, after the agent-telegrapher was off duty.

2. Carrier shall compensate Agent-Telegrapher G. P. Shelhorse for one call, two hours and forty minutes at time and one-half rate (regular rate is \$493.52 per month), for the violation set herein. Total amount of this claim is \$9.70. Further, for any subsequent violations as mentioned herein, the Carrier shall compensate G. P. Shelhorse, employe working the agent-telegrapher's position at Culpeper, Virginia, date violation is permitted by payment of one call at the rate of the position.

EMPLOYEES' STATEMENT OF FACTS: The agent-telegrapher's position at Culpeper, Virginia, has assigned hours of 8:00 A.M. to 5:00 P.M., with one hour off for lunch, Monday through Saturday. He is assigned Sunday as a relief day, which is part of a regular relief assignment. Claimant G. P. Shelhorse was the regular assigned agent-telegrapher on Saturday, May 10, 1958, when at 6:45 P.M. Clerk W. D. Reams, an employe not covered by the Telegraphers' Agreement, located at Culpeper, Virginia, transmitted the following message to the Washington Terminal in Washington, D.C.:

"Culpeper, Virginia
To Station Master
Washington, D. C.

May 10, 1958

No. 136 has 46 passengers for Trenton, New Jersey. Have red cap meet train.

/s/ Stansel
Conductor"

before the effective date of the agreement) and in 1958 (which was 9 years after the effective date of the agreement), the ORT requested that the carrier confer upon the telegraphers a monopoly on the handling of train orders, lineups, so-called reports of record and other communications. They, obviously, were seeking a right which they recognized employees of the telegraphers' class or craft did not have, either before or after the effective date of the current agreement. No such rules were ever negotiated by the parties. The ORT conceded in these Section 6 notices that they do not have the right they are now claiming in this dispute. If such was true, a telegrapher would have to be assigned to every telephone on carrier's property.

Thus, it is evident that the claim now before the Board is not supported by the effective agreement, and that it is nothing more than an effort by the employees to obtain through the Adjustment Board what they failed to obtain in negotiations with the carrier as required by the Railway Labor Act. As a matter of fact, even the employees' proposals dealt with messages of record "in connection with train movement" and not to other communications. The Third Division has stated many times that its function and authority under the Railway Labor Act is to interpret the applicable rules of the agreements in effect between parties to disputes, not to abrogate, change or make rules for the parties.

The evidence of record discloses that there was no violation of the agreement, and that the work in question is not reserved to telegraphers. For the reasons set forth herein, carrier respectfully requests that the claim be denied in its entirety.

OPINION OF BOARD: The claim concerns a telephone call made by a Clerk from Culpeper, Virginia, transmitting a message from the Conductor of Passenger Train No. 136 to the Station Master at Washington, D. C. The message stated the number of passengers bound for Trenton, New Jersey, and asked that a Red Cap meet the train. An Agent-Telegrapher is employed at Culpeper with assigned hours of 8:00 A.M. to 5:00 P.M., Monday to Saturday with Sunday as part of a regular relief assignment. The message in question was sent on Saturday, May 10, 1958, at 6:45 P.M., when the Agent-Telegrapher was not on duty.

The Petitioner claims that said Agent-Telegrapher (Claimant Shelhorse) was available and should have been called.

The Carrier's statement is not successfully disputed that no written "message of record" was involved. There is also no showing in the record that the conversation affected or controlled the movement of the train involved or of other trains.

The Scope Rule of the effective Agreement merely lists job titles. It deals in one place only with the Carrier's obligation to differentiate among occupations in working assignments. This is in Rule 31, which protects the covered employees in the function of transmitting train orders. The incident here in issue cannot be described as the transmission of train orders. There is no showing by the Petitioner, or even assertion that the disputed work affected or controlled the movement of trains.

The Board must then apply the interpretation it has laid down in a consistent, repeated and continual line of awards where claims of this kind are made under a general Scope Rule, such as this Agreement contains. That is, that the Petitioner must prove that the work claimed has been by

history, tradition and custom, exclusively performed on the system of the Carrier by employes holding positions with the job titles listed in the Scope Provision. See Awards 10954, 11506 and 12356.

In the instant matter, the Petitioner did not offer proof of a practice and custom showing the disputed work to have been performed exclusively by employes covered in its Agreement with the Carrier. Its claim must, therefore, be rejected.

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.