

Award No. 12709

Docket No. TE-13222

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:

The carrier, on or about July 3, 1960, initiated and put into effect, a program on a system-wide basis of removing a large portion of communications work, namely—transmitting and receiving messages and reports of record, which has from time immemorial been performed by employes covered by the Scope of the Telegraphers' Agreement.

It is now requiring or permitting employes not coming within the scope of said Agreement to perform by means of the telephone in lieu of telegraph, printer and other mechanical telegraph machines, communication service which is reserved to employes of the classes enumerated in the Agreement.

In doing so, the carrier has violated, and continues to violate, the provisions of the Telegraphers' Agreement, as is shown in the violation herein. This is a continuing claim for all violations subsequent to the date shown herein.

On July 13, 1960, Mr. G. W. Cobble, materials engineer in Chief Engineer's office, Knoxville, Tennessee, transmitted by telephone, message of record to W. R. Ward, Clerk-Telegrapher, at Greeneville, Tennessee.

Carrier shall compensate P. O. Byerley, senior idle employe, Knoxville Division, by paying him one day (8 hours) at the minimum rate of pay for Clerk-Telegraphers Knoxville Division, July 13, 1960, and the same compensation shall be allowed P. O. Byerley for each subsequent date that the violation of receiving and transmitting messages and reports of record is permitted.

EMPLOYES' STATEMENT OF FACTS: On or about July 3, 1960, the Carrier put into effect a program on a system-wide basis of removing a large portion of the communication work, namely transmitting and receiving mes-

Nor does the statement of claim indicate how many eight-hour penalty payments each week are demanded for Mr. Byerley, whether for each Wednesday rest day, both rest days or seven days per week. In short, for lack of support and specificity, the "continuing claim" obviously is not of the type referred to in the August 21, 1954 Agreement; it requests carrier to do the impossible, and is in fact a nullity.

The Telegraphers' Agreement has to be interpreted and applied in a logical and sensible manner. It does not contemplate or require the impossible, but that is what the ORT here contends should be done.

The evidence of record does not support petitioner's contention that the agreement was violated, nor does it support the claim for penalty pay. Carrier has shown the claim and demand in toto to be absurdities and designed to exact monetary compensation for service not performed and not needed. For reasons set forth herein, the claim should be denied in its entirety, and carrier respectfully requests that the Board so decide.

(Exhibits not reproduced.)

OPINION OF BOARD: The claim alleges a violation because, on July 13, 1960, an Assistant Materials Engineer in the office of the Chief Engineer, M. W. & S. at Knoxville, Tennessee, used telephone to communicate instructions to a Clerk-Telegrapher on duty at Greeneville, Tenn., for Track Supervisor at Greeneville.

The message was not a train order and the Petitioner has failed to meet its burden of proving exclusive rights to the performance of this work by tradition, custom and practice, as is required when a claim of this kind is made under the general type Scope Rule which is contained in the governing Agreement.

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 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.