

Award No. 12710
Docket No. TE-13255

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Louis Yagoda, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**SOUTHERN RAILWAY COMPANY,
THE CINCINNATI, NEW ORLEANS AND TEXAS PACIFIC
RAILWAY COMPANY,
THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

1. 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 employees covered by the scope of the Telegraphers' Agreement.
2. It is now requiring or permitting employees 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 employees of the classes enumerated in the Agreement.
3. In doing so, the Carrier has violated and continues to violate, the provisions of the Telegraphers' Agreement, as is shown in the violations herein. These are continuing claims for all violations subject to the dates shown herein.

CLAIM No. 1

1. On July 15, 1960, Messrs. Gentry and Tittle, car inspectors at Johnson City, Tennessee, transmitted by telephone, message of record to an employe working in the office of the Master Mechanic, F. E. Kimball, at Knoxville, Tennessee.

2. Carrier shall compensate C. L. Crowe, senior idle extra employe, Knoxville Division, by paying him one day (8 hours) at the minimum rate of pay for Clerk-Telegraphers Knoxville Division July 15, 1960, and the same com-

pensation shall be allowed C. L. Crowe for each subsequent date that the violation of receiving and transmitting messages and reports of record is permitted.

3. Further, the Carrier shall compensate H. W. Mumpower, senior idle employe, Knoxville Division, by paying him one day (8 hours at the minimum rate of pay for Clerk-Telegraphers, Knoxville Division, July 15, 1960, and the same compensation shall be allowed H. W. Mumpower for each subsequent date that the violation of receiving and transmitting messages and reports of record is permitted.

CLAIM No. 2

1. On July 11 and 12, 1960, C. M. Correll, Gang Foreman, Maintenance of Way, transmitted messages of record to J. F. Pruitt, Chief Dispatcher, Birmingham, Alabama.

2. On July 19, 1960, R. A. Kelso, Division Engineer, Moundville, Alabama transmitted a message of record to office of J. G. Hiner, Cincinnati, and also a message of record to Chief Clerk to Division Superintendent, Birmingham, Alabama.

3. For violations No. 1 and 2, Carrier compensate E. L. Day, Agent-Telegrapher, Moundville, Alabama, by paying him three calls, one each day for July 11, 12 and 19, 1960, and the same compensation shall be allowed Mr. E. L. Day for each subsequent date that the violation of transmitting and receiving messages and reports of record is permitted.

CLAIM No. 3

1. a. Violation No. 1. July 5, 1960, Assistant Superintendent M. F. Self, Attalla, Alabama, transmitted by telephone, a report of record to office of D. C. Ferguson, Atlanta, Georgia.

b. Violation No. 2. July 5, 1960, Assistant Superintendent M. F. Self, Attalla, Alabama, transmitted by telephone a report of record to Chief Dispatcher Pruitt, Jr., at Birmingham, Alabama.

c. For Violations No. 1 and No. 2, Carrier shall compensate M. P. McWhorter, senior idle extra employe, A.G.S. Division, by paying her three (3) days, 24 hours pay, at the minimum rate of pay for Clerk-Telegraphers, A.G.S. Division, July 5, 6, and 7, 1960, and the same compensation shall be allowed M. P. McWhorter for each subsequent date that the violation of transmitting and receiving messages and reports of record is permitted. Further, that the Carrier shall compensate C. O. Allen, second extra employe in seniority, idle, July 5, 1960; P. W. Colvard, the second extra employe in seniority, idle, July 6, 1960; and R. J. Cochran, senior idle employe, July 7, 1960, by paying each employe one day, 8 hours pay, at the minimum rate of pay for Clerk-Telegraphers, A.G.S. Division, July 5, 6, and 7, 1960, in order listed and the same compensation shall be allowed for each subsequent date that the violation of transmitting and receiving messages and reports is permitted.

2. a. Violation No. 1. July 8, 15, and 22, 1960, Assistant Superintendent M. F. Self, Attalla, Alabama, transmitted by telephone, a report of record to office of D. C. Ferguson, Atlanta, Georgia.

b. Violation No. 2. July 8, 15, and 22, 1960, Assistant Superintendent M. F. Self, transmitted by telephone a report of record to Chief Dispatcher J. F. Pruitt, Jr., at Birmingham, Alabama.

c. For Violations No. 1 and No. 2, Carrier shall compensate M. F. McCormic, senior idle employe, A.G.S. Division, by paying her three (3) days, 24 hours pay, at the minimum rate of pay for Clerk-Telegraphers, A.G.S. Division, July 8, 15, and 22, 1960, and the same compensation shall be allowed M. F. McCormic for each subsequent date that the violation of transmitting and receiving messages and reports of record is permitted. Further, that the Carrier shall compensate C. E. Roberts, second employe in seniority, idle, by paying him three (3) days pay, 24 hours, at the minimum rate of pay for Clerk-Telegraphers, A.G.S. Division, July 8, 15, and 22, 1960, and the compensation shall be allowed C. E. Roberts for each subsequent date that the violation of transmitting and receiving messages and reports is permitted.

3. a. Violation No. 1. July 10, 11, 12, 13, 14, 20, and 21, 1960, Assistant Superintendent M. F. Self, Attalla, Alabama, transmitted by telephone, a report of record to office of D. C. Ferguson, Atlanta, Georgia.

b. Violation No. 2. July 10, 11, 12, 13, 14, 20, and 21, 1960, Assistant Superintendent M. F. Self, Attalla, Alabama, transmitted by telephone a report of record to Chief Dispatcher J. F. Pruitt, Jr., at Birmingham, Alabama.

c. For Violations No. 1 and No. 2, Carrier shall compensate F. W. Colvard, senior idle extra employe, A.G.S. Division, by paying him seven (7) days, 56 hours pay, at the minimum rate of pay for Clerk-Telegraphers, A.G.S. Division, July 10, 11, 12, 13, 14, 20, and 21, 1960, and the same compensation shall be allowed P. W. Colvard for each subsequent date that the violation of transmitting and receiving messages and reports of record is permitted. Further, that the Carrier shall compensate M. P. McWhorter, senior idle extra employe, A.G.S. Division, by paying her two (2) days, 16 hours pay, July 10 and 11, 1960 — R. C. Wilson, senior idle employe, A.G.S. Division, one (1) day, 8 hours pay, July 12, 1960 and also compensate C. O. Allen, second extra employe in seniority, idle, by paying him four (4) days, 32 hours pay, at the minimum rate of pay for Clerk-Telegraphers, A.G.S. Division, July 13, 14, 20, and 21, 1960, and the same compensation shall be allowed for each subsequent date that the violation of transmitting and receiving messages and reports is permitted.

4. a. Violation No. 1. July 16, 1960, Assistant Superintendent M. F. Self, Attalla, Alabama transmitted by telephone, a message of record to office of D. C. Ferguson, Atlanta, Georgia.

b. Violation No. 2. July 16, 1960, Assistant Superintendent M. F. Self, Attalla, Alabama, transmitted by telephone, a report of record to Chief Dispatcher, J. F. Pruitt, Jr., at Birmingham, Alabama.

c. For Violations No. 1 and No. 2, Carrier shall compensate C. O. Allen, senior idle extra employe, A.G.S. Division, by paying him 4 days, 32 hours pay, at the minimum rate of pay for Clerk-Telegraphers, A.G.S. Division, July 16, 17, 18, and 19, 1960, and the same compensation shall be allowed C. O. Allen for each subsequent date that the violation of transmitting and receiving messages and reports of record is permitted. Further that the Carrier shall compensate J. C. Daniel, senior idle employe, A.G.S. Division, July 16, 1960, by paying him one day, 8 hours pay; M. P. McWhorter, senior idle extra employe, A.G.S. Division, July 17 and 18, 1960, shall be compensated by being

paid 2 days, 16 hours pay and R. C. Wilson, senior idle employe, A.G.S. Division, July 19, 1960, shall be compensated by paying him one day, 8 hours pay, each to be paid at the minimum rate of pay for Clerk-Telegraphers, A.G.S. Division, and the same compensation shall be allowed for each subsequent date that the violation of transmitting and receiving messages and reports is permitted.

5. a. Violation. July 24, 26, 27, and 28, 1960, Chief Dispatcher J. F. Pruitt, Jr., Birmingham, Alabama transmitted or received by telephone messages of record.

b. For violation listed above, Carrier shall compensate C. O. Allen, senior idle extra employe, A.G.S. Division, by paying him 4 days, 32 hours pay, at the minimum rate of pay for Clerk-Telegraphers, A.G.S. Division, July 24, 26, 27, and 28, 1960, and the same compensation shall be allowed C. O. Allen for each subsequent date that the violation of transmitting and receiving messages and reports of record is permitted.

CLAIM No. 4

1. a. Violation No. 1. July 25, 1960, Chief Dispatcher R. L. Benham, Louisville, Kentucky, transmitted by telephone, a message of record to J. J. Barrett, Clerk-Telegrapher, Princeton, Indiana.

b. Violation No. 2. July 31, 1960, Chief Clerk R. Deatherage, Coapman, Illinois, transmitted by telephone a report of record to Chief Dispatcher R. L. Benham, at Louisville, Kentucky.

c. Violation No. 3. August 29, 1960, Yard Clerk, I. Williams, Huntington, Indiana, transmitted a message of record to Train No. 57 at Princeton, Indiana and copied by Clerk-Telegrapher, J. J. Barrett, Princeton, Indiana.

2. a. For Violation No. 1, Carrier shall compensate R. J. Yonaka, senior idle extra employe, St. Louis—Louisville Division, by paying him one day, 8 hours pay, at minimum rate of pay for Clerk-Telegraphers, St. Louis—Louisville Division, July 25, 1960, and the same compensation shall be allowed R. J. Yonaka for each subsequent date that the violation of transmitting and receiving messages and reports of record is permitted.

b. For Violation No. 2. Carrier shall compensate J. E. Hickox, senior idle extra employe, St. Louis—Louisville Division, by paying him one day, 8 hours pay, at the minimum rate of pay for Clerk-Telegraphers, St. Louis—Louisville Division, July 31, 1960, and the same compensation shall be allowed J. E. Hickox for each subsequent date that the violation of transmitting and receiving messages and reports of record is permitted.

c. For Violation No. 3. Carrier shall compensate L. L. Hooper, senior idle extra employe, St. Louis—Louisville Division, by paying him one day, 8 hours pay, at the minimum rate of pay for Clerk-Telegraphers, St. Louis—Louisville Division, August 29, 1960, and the same compensation shall be allowed L. L. Hooper for each subsequent date that the violation of transmitting and receiving messages and reports of record is permitted.

CLAIM No. 5

1. On July 27, 1960, Conductor Cunningham, Train No. 4, filed message at Lexington, Kentucky, to be transmitted to Station Master, at Cincinnati Union Terminal. Yard Clerk at Lexington by use of telephone, transmitted the message to Cincinnati.

2. Carrier shall pay Floyd H. Carmichael one call for July 27, 1960.

CLAIM No. 6

1. Violation No. 1. On July 13, 1960, consist for Train No. 52, Conductor Drury was sent by Yard Clerk Clarkson, Danville, Kentucky, to Operator McFarland at Youngstown, Kentucky, 1:50 A. M.

2. Violation No. 2. On August 20, 1960, consist for Train No. 52, Conductor Brooks sent by Yard Clerk Ward Smith to Operator Riggs at Youngstown, Kentucky. Sent by Yard Clerk Ward Smith at Danville, Kentucky at 1:55 A. M.

3. For Violations No. 1 and No. 2, Carrier shall compensate Extra Board idle employe R. D. Wilson, by paying him one minimum day of 8 hours pay for each of the above violations. And the same compensation shall be allowed R. D. Wilson, for each subsequent date that the violation of transmitting and receiving messages and reports of record is permitted.

CLAIM No. 7

1. a. Violation No. 1. On August 29, 1960, message sent by Chief Dispatcher to Yard Clerk C. C. Simms, Lexington Yard.

- b. Violation No. 2. Communication of record sent by Chief Dispatcher to Operator at "DI" Cincinnati, on August 22, 1960.

- c. Violation No. 3. Consist sent by Yard Clerk, Danville, to Dispatcher Stites at Louisville, on September 7, 1960.

2. a. For Violation No. 1, Carrier shall compensate E. D. Rigney, for one call at 2 hours and 40 minutes at the time and one-half rate for August 29, 1960.

- b. For Violation No. 2, Carrier shall compensate R. D. Wilson, extra Telegrapher, 8 hours pay at pro rata rate for August 22, 1960.

- c. For Violation No. 3, Carrier shall compensate R. D. Wilson, extra Telegrapher, 8 hours pay at pro rata rate for September 7, 1960.

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 messages and reports of record, which had from time immemorial been performed by employes covered by the scope of the Telegraphers' Agreement. It began requiring and permitting employes not coming within the scope of the said Agreement to perform by means of the telephone in lieu of the telegraph, printer and other mechanical telegraph machines, communication service which is reserved to employes of the classes enumerated in the Scope Rule of this Agreement. In so doing the Carrier violated and continues to violate the provisions of the Telegraphers' Agreement.

On July 9, 1960, General Chairman Watson called the attention of Assistant Vice President — Labor Relations Burroughs to the fact that members under the Telegraphers' Agreement were disturbed by this action of the Carrier and requested a conference. On July 29, a conference was held between the Telegra-

occurred on the dates involved, nor is there even any reference to subsequent "violations" on the district where claimants hold seniority. The ORT simply advances general unsupported assertions as the purported basis for the "continuing claim."

Nor does the statement of claim indicate how many penalty payments each week are demanded for each claimant. It does not even indicate who would be the judge as to what telephone conversations would constitute a "violation" of the agreement. 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 carriers to do the impossible.

By filing these seven claims, which cover specific dates and circumstances, the employes themselves have recognized that none of them are properly continuing claims of the type covered by Article V, Section 3 of the August 21, 1954 Agreement. If they were, it would have been necessary to file but one claim.

The evidence of record does not support petitioner's contention that the agreement was violated, nor does it support the demands for pay. It has been shown herein that the claims are designed to exact monetary compensation for service not performed and not needed. For the reasons set forth herein, the claims should be denied and carriers respectfully request that the Board so decide.

OPINION OF BOARD: Seven claims are made, some of them alleging a number of violations. Accompanying these claims is a general allegation 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 communication work from the employes who are the subject of the Agreement between the Order of Railroad Telegraphers and the Carrier.

It is also stated that the claims made "are continuing claims for all violations subsequent to the dates shown herein."

CLAIM No. 1

Car inspectors at Johnson City telephoned the Master Mechanic's office at Knoxville, Tennessee and gave to an employe therein an "Echometer Report" concerning cars which they had inspected at Johnson City.

The Petitioner alleges that the work in question had in the past been handled by telegraphers employed at Johnson City and Knoxville telegraph offices and that it was not until on or about July 3, 1960 that messages and reports such as these were received by other than telegraphers.

The Carrier denies that this type of message had been in the past confined to telegrapher handling, contending that "conversations of this nature between men at outlying points and their headquarters concerning work which they have been doing, have been carried on for many years in the past, and complaint has never before been received." It is further asserted that this was a standard, accepted procedure.

We find that the parties are in conflict concerning the facts on the basic and determinative question of whether there has been traditional and cus-

tomary exclusivity of assignment to the Claimants. We do not find in the record a basis for resolution of this conflict and must, accordingly, dismiss the claim.

CLAIM No. 2

This claim includes three separate incidents in which violations are alleged. The only specific description of the episodes by Petitioner which appear in the record are in the Statement of Claim addressed to this Board. The Petitioner does not submit to us copies of its correspondence to the Carrier on these claims (except for the general allegations of a system-wide program of work usurpation) and neither its Ex Parte Submission nor its "Employees' Statement at Hearing" give any explicit statement of facts concerning these specific allegations nor make any explicit statement of support for these two specific claims.

The Carrier, however, describes the incidents in more details than is given in the Petitioner's Statement of Claim and there seems to be no disagreement concerning the facts of the subject occurrences.

The Carrier furthermore cites correspondence from it to the Petitioner in which the Carrier alleges that the practices complained of have been established procedure and takes the position in its submission to this Board that the employees involved have "always" handled communications of this type.

There is, therefore, no showing by the Petitioner that the work in question had been customarily and traditionally assigned exclusively to the Claimants. Absent such a showing under the general type Scope Rule in the governing Agreement, the claim cannot be sustained.

CLAIM No. 3

This claim lists 37 separate incidents in which violations are alleged in that messages were impermissibly handled by other than telegraphers.

The record is again as devoid of evidence by the Petitioner as to past practice as in the case of Claim No. 2 above and we reach the same conclusion: that is, that the Petitioner has failed to meet the burden of proving that the work in issue was exclusively assigned to telegrapher employees by custom, tradition and practice.

CLAIM No. 4

This claim lists three separate incidents in which violations are alleged in that messages were impermissibly handled by other than telegraphers.

The same description of the record and our evaluation thereof, as given in Claims 2 and 3 above are applicable here.

CLAIM No. 5

It is claimed that on July 27, 1960, a conductor filed a message at Lexington, Kentucky to be transmitted to Station Master at Cincinnati Union Terminal and that said message was impermissibly phoned to Cincinnati by Yard Clerk at Lexington.

The Petitioner gives no further details concerning the content of the message in question, but the Carrier quotes its correspondence to the Petitioner, without contradiction from the latter, that the message was a request to have a wheel chair available for an invalid passenger.

The same description of the record and our evaluation thereof as given in Claims 2, 3 and 4 above are applicable to this claim.

CLAIM No. 6

Two separate violations are alleged claiming that telegraphers' work was impermissibly performed by others.

The same description of the record and our evaluation thereof as given in Claims 2, 3, 4 and 5 are applicable here.

CLAIM No. 7

This claim alleges three separate violations in that messages were impermissibly handled by other than telegraphers.

The same description of the record and our evaluation thereof as given in Claims 2, 3, 4, 5 and 6 are applicable here.

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 Claim No. 1 is dismissed for reasons given in the Opinion.

The Agreement was not violated in respect to Claims Nos. 2, 3, 4, 5, 6, and 7.

AWARD

Claim No. 1 is dismissed.

Claims Nos. 2, 3, 4, 5, 6 and 7 are 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.