

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard J. Seff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad that:

Carrier violated the agreement between the parties when it required or permitted employes not covered by the agreement to handle train orders at Knowles or Gatesville, Mississippi, as follows:

1. (a) On November 5, 1958, at Gatesville, a conductor received, copied, and delivered Train Order No. 29.

(b) Carrier shall compensate the senior, idle telegrapher (extra in preference) on the seniority district in the amount of a day's pay.

2. (a) On November 7, 1958, at Gatesville, a conductor received, copied, and delivered Train Order No. 28.

(b) Carrier shall compensate the senior, idle telegrapher (extra in preference) on the seniority district in the amount of a day's pay.

3. (a) On November 10, 1958, at Gatesville, a conductor received, copied and delivered Train Order No. 25.

(b) Carrier shall compensate the senior, idle telegrapher (extra in preference) on the seniority district in the amount of a day's pay.

4. (a) On November 12, 1958, at Gatesville, a conductor received, copied, and delivered Train Orders Nos. 27 and 28.

(b) Carrier shall compensate the senior, idle telegrapher (extra in preference) on the seniority district in the amount of a day's pay.

5. (a) On November 14, 1958, at Gatesville, a conductor received, copied, and delivered Train Order No. 23.

(b) Carrier shall compensate the senior, idle telegrapher (extra in preference) on the seniority district in the amount of a day's pay.

6. (a) On November 17, 1958, at Knowles, a conductor received, copied, and delivered Train Order No. 30.

(b) Carrier shall compensate the senior, idle telegrapher (extra in preference) on the seniority district in the amount of a day's pay.

7. (a) On December 15, 1958, at Knowles, a conductor received, copied, and delivered Train Order No. 25.

(b) Carrier shall compensate the senior, idle telegrapher (extra in preference) on the seniority district in the amount of a day's pay.

8. (a) On February 23, 1959, at Knowles, a conductor received, copied, and delivered Train Order No. 22.

(b) Carrier shall compensate the senior, idle telegrapher (extra in preference) on the seniority district in the amount of a day's pay.

9. (a) On April 6, 1959, at Knowles or Gatesville, a conductor received, copied, and delivered Train Order No. 21.

(b) Carrier shall compensate the senior, idle telegrapher (extra in preference) on the seniority district in the amount of a day's pay.

10. (a) On April 8, 1959, at Knowles or Gatesville, a conductor received, copied, and delivered Train Order No. 28.

(b) Carrier shall compensate extra telegrapher S. F. Phillips in the amount of a day's pay.

11. (a) On April 13, 1959, at Knowles or Gatesville, a conductor received, copied and delivered Train Order No. 22.

(b) Carrier shall compensate extra telegrapher S. F. Phillips in the amount of a day's pay.

12. (a) On April 29, 1959, at Knowles or Gatesville, a conductor received, copied, and delivered Train Order No. 34.

(b) Carrier shall compensate extra telegrapher W. T. Dalton in the amount of a day's pay.

13. (a) On April 27, 1959, at Knowles or Gatesville, a conductor received, copied, and delivered Train Order No. 24.

(b) Carrier shall compensate telegrapher H. D. Walker in the amount of a day's pay.

14. (a) On May 4, 1959, at Knowles or Gatesville, a conductor received, copied, and delivered Train Order No. 19.

(b) Carrier shall compensate telegrapher H. D. Walker in the amount of a day's pay.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

Gatesville, Mississippi, is a station on the Louisiana Division of this Carrier's lines. Just north of the depot at Gatesville is a switch, where a spur track joins the main tracks. The spur track extends about three miles from the main track. Knowles, Mississippi, is the station at the end of this spur track. A large gravel pit is located at Knowles.

There are no positions under the agreement at either Gatesville or Knowles. Until about a month prior to the time cause for this claim arose, there was a position of Agent-Telegrapher at Gatesville, which had existed for fifty years or more. The position was abolished and the station closed.

On the dates mentioned in the Statement of Claim, a conductor in charge of a train used the train dispatcher's telephone circuit from a telephone located near the junction switch and handled one or more train orders. The conductor on each occasion received, copied, and delivered the train order or train orders. The fact that train orders were handled at the times and dates mentioned is not in dispute. The Carrier declined the claims in this manner:

"You have several claims similar to the above which are pending before the National Railroad Adjustment Board. The various reasons why such claims are not supported by the agreement have been explained to you and are explained in detail in the Board proceedings."

The above quotation is the penultimate paragraph of Contract Counselor Steel's letter of June 30, 1959, file E-45-1-258.

Claims covering the violations were filed and handled in the usual manner up to and including the highest designated officer of the Carrier and have been denied. Correspondence reflecting the handling of the first claims, which is typical of the handling of the others, is attached hereto as ORT Exhibits 1 through 5.

POSITION OF EMPLOYEES: The work of handling train orders is reserved to employes covered by the Telegraphers' Agreement.

The Scope Rule is the primary rule involved, and reads:

"RULE 1. SCOPE

(a) This agreement shall govern the employment and compensation of manager-operators, wire chiefs, telegraphers, telephone operators (except switchboard operators), agent-telegraphers, agent-telephoners, clerk-telegraphers, clerk-telephoners, teletype and/or printer operators (to the extent covered by agreement dated October 27, 1947), towermen, levermen, tower and train directors, block operators, and staffmen, specified in wage scale, and analogous positions hereafter established; also such agents as are listed herein.

tion is attempting to have this Board write into the agreement, by contract construction, language that the parties themselves have in past instances carefully considered and purposely rejected. This Board has in innumerable cases, including decisions affecting the parties here, held that the scope and train order rules of prior agreements containing identical language to the current agreement do not support the claim. The precise issues presented in this case have previously been passed upon by this Board and this Board should uphold its prior decisions lest the parties be in utter confusion as to their responsibilities. The claims here presented are contrary to the agreement and are unreasonable as to practical railroad operations, and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The claims involve the same parties and same issues as involved in Award 12761. For the reasons stated in that Award, the claims herein will also 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 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

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1964.