

Award No. 13279

Docket No. TE-11087

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORTHWESTERN PACIFIC RAILROAD COMPANY

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

1. The Carrier violated the parties' Agreement when it required or permitted a section foreman and a bulldozer operator, employees not covered by said Agreement, to copy and handle train lineups by telephone at Alton and South Fork, California, at a time outside the assigned hours of the covered employees at these stations.

2. (a) B. J. Vonah, regularly assigned agent-telegrapher, Alton, California, or his successor, shall be compensated for one special call each date March 10, 12, 13, 14, 17, 18, 19, 24, 26, 27, 28, April 7, 21 and 25, 1958.

(b) M. E. Dunn, regularly assigned agent-telegrapher, South Fork, California, or his successor, shall be compensated for one special call each date March 10, 11, 14, 17, 18, 19, 20, 24, 26, 27, 28, April 15, 18 and 29, 1958.

(c) Claimant Vonah be compensated for one special call each date subsequent to April 25, 1958 when similar violations occur.

(d) Claimant Dunn be compensated for one special call each date subsequent to April 29, 1958 when similar violations occur.

NOTE: Actual number of days involved subsequent to April 25 and April 29, 1958, and the compensation due, to be determined by joint check of Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: There is evidence an Agreement by and between the parties to this dispute effective August 1, 1945, reprinted September 1, 1951, including revisions.

At Page 30 of said Agreement are listed the positions in existence at South Fork and Alton, California on the effective date of the Agreement. They are:

sion Trainmaster, a Division Engineer and two section foremen to the effect that there has been a well-recognized practice on this property of permitting foremen to obtain their line-ups when telegraphers are not on duty, under the circumstances of this case, since 1942, if not since 1936. While the employes deny the existence of this practice, we think the proof preponderates in the Carrier's favor. In view of the failure of the Scope Rule to spell out the work covered by the Agreement, it is our conclusion that the past practices as they existed when the Agreement was entered into are controlling. See Awards 6032 and 6607."

Also see Awards 6607-8 (Referee Hubert Wyckoff); Award 6032 (Referee Dudley E. Whiting); Awards 5582-3-4-5 (Referee Francis J. Robertson); Awards 4265-6 (Referee Curtis G. Shake); Award 3363 (Referee Fred W. Messmore.)

CONCLUSION

In view of what has been shown supra, Carrier asserts that claims for calls subsequent to April 25, 1958, and prior to May 11, 1958, in behalf of claimants Vonah and Dunn, as covered by Sections (c) and (d), Item 2 of the claim, are in violation of the agreement signed at Chicago, August 21, 1954, and therefore this portion of the claim should be dismissed.

The Carrier asserts that the other portions of the claim in this docket are entirely lacking in either merit or agreement support and therefore requests that said claim be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties, facts, and circumstances are not distinguishable from those in Award No. 8314 (Shugrue).

Award 8314 represents one line of authorities on this question. There is respectable authority to support either result.

Consistency in following the award on a property on a question is important.

Award No. 8314 appears well reasoned, not palpably wrong, and will be followed in this case.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 has not been violated.

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AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of February, 1965.