

Award No. 13473
Docket No. 'FE-12258

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION
(Supplemental)

John J. McGovern, 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 & Ohio Railroad, that:

1. (a) On December 21, 1969 it ~~required~~ or permitted Trainmaster **G. D. Fikes** to handle train order No. 48 at Tibbee, Mississippi.

(b) ~~Carrier shall~~ compensate Telegrapher W. L. Adams in the amount of a day's pay.

2. (a) On November 30, 1969 it required or permitted **Trainmaster G. D. Fikes** to handle train ~~orders~~ Nos. 32 and 33 at Columbus, Mississippi.

(b) ~~Carrier shall~~ compensate Telegrapher W. L. Adams in the amount of a day's pay.

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

Tibbee, ~~Mississippi~~ and Columbus Mississippi, are stations on the Southern Division of this Carrier, near **Artesia**, Mississippi. There are no positions under ~~the~~ agreement at either station. There ~~was a position~~ of Agent-Telegrapher at Columbus prior to November, 1955, when it ~~was~~ discontinued. There ~~was~~ a position of non-telegraph ~~agent~~ at Tibbee, which ~~was~~ discontinued quite a number of years ago.

On December 21, 1959, between 8 P. M. and 9 P. M. the Train **Dispatcher** at Tuscaloosa, Alabama, transmitted the following ~~train order to the operator~~ at **Artesia**:

"GULF, MOBILE & OHIO RAILROAD COMPANY
Train Order No. 43

To **C&E** Extra 744 North at Tibbee
c/o **G. D. Fikes**

Dec. 21, 1969
Artesia, Miss.

No. 31 Eng 737 meet Extra 744 North at **Muldon** instead
of **Tibbee**

s/ BHP
Chief Train Dispatcher

Made **Comp. 820 PM** Dispatcher CHG Operator **Pilkinton "**

This rule **was** designed to penalize the **Carrier** by requiring time and one-half payments, plus expenses, when telegraphers were required **to** perform duties on other than their regular assignments and the rule specifically provides that they will not perform such duties "except in case of emergency". There was no emergency in the instant case, such as to require the **services** of a telegrapher. As a matter of fact, a telegrapher would **have** contributed nothing to the safety, efficiency or economical performance of the trains. His use would have only contributed to further delaying the **train**.

CONCLUSION

The Agreement does not contemplate that telegraphers perform duties at non-telegraph stations, nor does it contemplate payments to telegraphers when duties are performed by others at non-telegraph stations. The only mention of train orders in the Agreement between the parties is that contained in Rule 15, which means and has been **so** construed by this Board to apply only at points where telegraphers are employed. The Telegraphers' **Organization** has three times proposed that the Agreement be changed to provide payments such as asked for **here**. Each of these proposals has been carefully considered and declined. This Board should not by interpretation write **into** the Agreement what the parties carefully considered and deliberately rejected.

The claim here presented is not supported by the Agreement and should be denied.

(**Exhibits** not reproduced).

OPINION OF BOARD: The Claim involves the handling of train orders at locations where telegraphers covered by the agreement are not employed. Awards 8207, 11331, 11989 and 12761 involved the same issues between the same parties. Those awards are not **erroneous** and are dispositive of the **claim** herein. We will accordingly deny the Claim.

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 **Employees** involved **in this** dispute are **respectively** Carrier and Employee 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** 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 15th day of April 1966.