

Award No. 13500
Docket No. **TE-12854**

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILROAD COMPANY

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

1. Carrier violated **the** provisions of the Agreement between the parties when on October 27, 1960, it required or permitted an **em-
ploye** not covered by the scope of the Agreement, a track super-
visor, **to** receive and transmit messages directly to and from a train
dispatcher, **on** the latter's telephone line, at Cairo, Missouri, and;

2. As a consequence of the violation, Carrier shall compensate
M. L. Harlan, senior idle extra **telegrapher**, a day's pay, eight (8)
hours at pro **rata** rate.

EMPLOYES' STATEMENT OF FACTS: **There** is in evidence an Agree-
ment by and between the parties **to** this dispute, effective September 1, 1966,
and as otherwise amended.

The circumstance which brought **about** the **claim** was created when, at
about 10:29 A. M, on Monday, October 27, 1960, Track Supervisor **Watkins**,
an **employee** not covered by the scope of the Telegraphers' Agreement, com-
municated with the train dispatcher over his wire **as** follows:

"Track Supervisor — This is Jim up at Cairo. When are **they** going
to run that Local?

Dispatcher — Do you want me to get time slipped for giv-
ing you a lineup? You know that **costs \$7.20**.

Track Supervisor — **Well** — we got that big tank just about ready
to turn **over**.

Dispatcher — **W e l l** - He is called for 20 A. **M**. Now, who
is going to **pay** the **time** slip.

regarding the work of receiving or copying of train line-ups or receiving or forwarding of "communications of record." See Award No. 4429, wherein this Division stated:

"In determining the rights of the parties it is our duty to interpret the applicable rules of the parties' Agreement as they are written. It is not our privilege or right to add thereto, and when a rule specifically lists the situations to which **applicable** it thereby excludes all those not included therein."

Article **V** of the Amendments to the Constitution of the United States includes the **following** guarantee: "No person shall be *** deprived of life, liberty or property without due process of law; * * *."

The **Congress** of the United States has in the exercise of the powers granted by **Article** 1, Section 1 and 8 (3) and 18 of that Constitution enacted the **Railway** Labor Act to provide for and govern collective bargaining relationships in the railroad industry.

The Railway Labor Act provides definite procedures for the handling of requests for changes in existing agreements relating to rates of pay and working conditions, see Section **6**, Section **5** (a), and Section **7** and 10 of that Act.

The Adjustment Board with its various divisions provided for in Section **3** of that Act is **established** for the limited and specific purposes provided for in Section 3, i.e., to consider and decide disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules and working conditions. This Board has no authority to add to or change or eliminate any rules of existing agreements or to place the Carrier in **any** position other than that in which it has placed itself by collective bargaining agreement.

The Carrier and its employees represented by The Order of Railroad Telegraphers have not by agreement provided that only telegraphers may furnish information by telephone which the Train Dispatcher needed in order to issue a message cautioning a train to approach a given point with caution and to proceed on hand signal nor have they **agreed** that an extra telegrapher will be paid eight (8) hours when other than a telegrapher receives or copies a train line-up or receives or forwards a "communication of record."

In order to sustain this claim this Board must ignore the bounds of its authority and the processes provided by law for the progressing of changes in agreements relating to rates of pay and working conditions for railroad employees and thereby deprive the persons who own this company of property without due process of law.

This Board has no jurisdiction to supply that which the parties' agreement does not contain.

The claim should be dismissed, and if not dismissed, denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The Petitioner contends that the Carrier violated the Agreement when it allowed a Track Supervisor to call a train dispatcher and discuss track conditions with him. There was a possibility that the track might block the progress of the train. Under such conditions, it must be reported immediately.

"GENERAL RULES.

F. Accidents, defects in track, bridges, signals, or any unusual conditions which may affect the movement of trains, must **be** promptly reported **by** quickest means of communication to the proper authority."

We And **that** this **was** an unusual condftian which necessitated **the call** for the safe operation of trains on the railroad.

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, 1984;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement of the parties 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** 29th day of April 1965.