

Award No. 13503
Docket No. **TE-12870**

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 Agreement when it required or **permitted** an employe not covered thereby to **perform** communication service of record by the use of **the** telephone on October 9, 1960, at **Green** Top, **Missouri**.

2. Carrier shall now be **required** to compensate G. **Hackett**, **regularly** assigned Agent-Telegrapher at Green Top, Missouri, on the basis of a "**call**" for the work denied him due to this violation.

EMPLOYEES' STATEMENT OF FACTS: There **is** in evidence an Agreement by and between the parties **to** this dispute, effective September 1, 1965, and as otherwise amended.

At page **32** of said Agreement there **is** listed a position of Agent-Telegrapher at Green Top, **Missouri**, to **which** position Agent-Telegrapher Grover Hackett was **regularly** assigned on the date of **claim**. The work week of **the** position involved is Monday through Friday, with rest days of Saturday and Sunday. Mr. Hackett's assigned work hours are 6:00 A. **M.** to **3:00** P. **M.**, with one hour **lunch** period.

The situation which gave rise to the **claim is** shown **following**, as presented by District Chairman Hannah, on page 2 of his claim letter of October **21, 1960**, to Chief Dispatcher O'Connor:

"The following communication of record took place over the Dispatchers' Telephone between R. **R. McAtee**, Road Foreman of Engines, at Green Top, Missouri, and Jim **Thornburg**, Train Dispatcher, at **Moberly**, Missouri, on Sunday, October **9th**, at **10:45** A. M.

'McAtee: McAtee at **Green** Top.

Dispatcher : Yes, Rob.

[577]

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~~.

This Carrier and its employees represented by The Order of Railroad Telegraphers have not by agreement provided that **only** telegraphers may transmit "~~communications~~ of record" by telephone nor have they agreed that a telegrapher **will** be paid a "~~call~~" as provided in **Rule 5** of the telegraphers' agreement ~~when~~ other than telegraphers transmit "communications of record" **by** telephone.

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 employes 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 information was a communication of ~~record~~ and ~~that~~ communications of record are reserved ~~to them~~ by the Scope Rule of the Agreement.

The issue is whether or not this work is reserved to telegraphers under the Agreement. Award **4516** and many others have **so** held. In recent years the Board has been holding that under a general Scope Rule the issue is determined by past practice ~~on~~ the property. Award 11401 **on** this same property, this Board held:

"Under Scope **Rules**, similar to the one we have here, there are many awards of this Board to the effect that the Claimant's **right** to the work which he contends belongs exclusively to **him** must be resolved from consideration of tradition, historical practice and **custom** and the burden *rests* upon the *Claimant to prove* his case."

on thii same property this award was followed by Award 11671. Also Award **11592** followed this holding wherein the Board stated:

"A considerable number of cases involving the question of **Telegraphers'** exclusive right **to** handle lineups have been *handled* by this Board. The holdings have not been consistent. The more recent — and more persuasive, in our judgment-awards have held ~~that~~ in ~~interpreting~~ a general scope **rule** which merely lists positions or titles, guidance must be obtained from a consideration of custom, tradition and practice on the property (**see Awards 10970, 10951, 10918, 101304, 10581, 10493** and others). In other words, there is no presumption of exclusivity-at least ~~in~~ certain areas- based ~~merely~~ on the listing of a job title and the fact ~~that~~ the **employee** **possessing** that title-has performed the work in question. In a contested case **such** as this, the question must be asked: Did Claimants, by tradition, custom and practice on this property, perform the work **to the exclusion of others?**"

Award 12356 also **followed** the same line of reasoning. We believe the **later** line of awards should be followed, and so we hold **that** the **Claimant's** right to the work must be resolved by the tradition, **practice and** custom on the property. Therefore, since there is no showing of past **practice** on the property the claim must be denied. The Opinion herein is **confined** to this Carrier.

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 Employea 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

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**.