

Award No. 13505
Docket No. **TE-13073**

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:

CLAIM NO. 1

1. Carrier violated the terms of the Agreement between the parties hereto when, on January 21, 1961, it required or permitted a train service employe not under the Agreement to perform work of transmitting, receiving and delivering train orders and reporting the movement of his train, over the Train Dispatcher's telephone, at **Benton** City and Wellsville, Missouri.

2. Carrier shall pay a call, amounting to three hours at straight time rate, to each of the two Claimants named herein below, for each violation:

a. B. L. Smith, **Agent-Telegrapher** at **Martinsburg**, Missouri, the Telegrapher employed at nearest station to **Benton** City.

b. M. E. Richardson, Second Shift Telegrapher at **Wells-**
ville.

CLAIM NO. 2

1. Carrier violated the terms of **the** Agreement between the parties hereto when, on December 9, 1960, it required or permitted a train service employe not under the Agreement to perform work of transmitting and receiving communications of record over the Train Dispatcher's **telephone** at **Centralia**, Missouri.

2. Carrier shall pay a call, amounting to three hours at straight time rate to S. R. Seymour, Second Shift Telegrapher at **Cen-**
tralia.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agree-
ment by and between the parties to this dispute, effective September 1, **1955**,
and as otherwise amended.

OPINION OF BOARD: We **will** consider the two parts **of** the claim since Claim No. 1 concerns a train order, and Claim No. 2 concerns a message.

Claim No. 1 is **unquestionably** a train order, for the communication changed Train Order No. **70**. It is a violation of the Agreement under the circumstances, for he **states** in Rule 1 that no other employe will be permitted to handle train orders.

Claim No. 2 was not a train order, in our judgment. The message **was** more **or** less advising what **he** was going to do. Train Order No. 91 was not changed. We And no evidence in the record to support the contention that the message was one of record. Consequently, Claim No. 2 will be denied.

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** was violated.

AWARD

Claim No. 1 sustained

Claim No. 2 denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST : S. H. **Schultz**
Executive Secretary

Dated **at** Chicago, Illinois, this 29th day of April 1966.

Award No. 13504
Docket No. TE-12962

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 Company, that:

1. The Carrier violated the terms of the Agreement between the parties hereto when it required or permitted an employe not covered thereunder to transmit a message of record on September 21, **1960**, at Delta Yard, Ohio.

2. Carrier shall now compensate H. K. Sanders, extra Telegrapher, for eight (8) hours at the applicable pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: There is **in** effect an Agreement between the parties to this dispute, effective September 1, 1955, and **as** subsequently amended; copies of which are on file with this Board and considered **as** evidence in this dispute.

An office is located in Delta Yard, Ohio, **which is** maintained with **a staff** of personnel employed by the Detroit, Toledo & **Ironton** Railroad Company, none of whom are covered by the Agreement between the parties hereto. Said office **staff** consists of an **Agent**, and several Clerks, who perform service **for** three railroads; (1) Detroit, Toledo & **Ironton**, (2) **Wabash**, and (3) New York Central.

On September 21, 1960, at **2:11 P.M.**, a Train Dispatcher, Mr. Stimpiie, whose **office** is **located** at Montpelier, Ohio, called the Delta Yard Office and requested the departure time of the Delta Turn train. **Mr.** Howard, a Clerk employed in the Delta Yard, answered the Dispatcher's call on the telephone and furnished **(OS'ed)** the information **sought** by Dispatcher Stimpiie, that the Delta Turn train departed at 2:00 P.M.

Copies of letters exchanged between the parties in the case handling on the property are listed below showing the ORT Exhibit Numbers assigned **to** each and the letter date and brief **content** thereof:

a position without advance notice under the Agreement, they have **the same right** to create a new position without notice. The Agreement provides that eight (8) hours shall constitute a day's work. The Agreement provides that **employees will not be** required to **suspend work during** regular working hours, **therefor** Sand&s is entitled to be compensated for this violation on the basis of eight (8) hours at pro **rata** rate fixed in **conformity** with positions of similar class on same division. The compensation provided for under 'special service' would be in **line** and conform to positions of telegrapher provided for in the Agreement. The fact that the dispatcher did call Delta Yard and request this information in itself constituted a need for a **telegrapher** at that point, and that such a need was not arranged for does not relieve the **carrier** from compensating the **employee** entitled to do the work. This has been upheld **by the Third Division**, National Railroad Adjustment Board and **has, on overwhelming occasions**, found this to be a violation."

Suffice it to say that it is the function of management to determine the number of employees needed to perform its work and to designate where those **employees** are to work: that there was no work at Delta Yard for a **telegrapher** to perform; and that no work was performed by either Train **Dispatcher Stimpfle** or a clerk at Delta Yard on the date in question which is neither in **violation** of the telegraphers' agreement or which would support a **contention** that a payment of eight (8) hours at straight time should be made in favor of an extra telegrapher as penalty therefor.

The claim is without merit and 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 4616 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 belong 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 this 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 line-ups 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 positiona or titles, guidance must be obtained **from a consideration of** custom, **tradition and** practice on the property (see Awards 10970, 10951,

10918, **10604**, 10681, 10498 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 employe 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 latter** 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 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 **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**.