

**Award No. 13506**

**Docket No. TE-13114**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Preston J. Moore, Referee

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**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 terms of the Agreement, when and because it required or permitted a Track Supervisor, on Monday, January **30**, 1961, at Sturgeon, Missouri, to request and receive a lineup over the Train Dispatcher's telephone, at a time when the Agent-Telegrapher assigned thereto was off duty, but available for such service.
2. Carrier shall compensate Mr. C. L. Hill, **regularly** assigned Agent-Telegrapher at Sturgeon, Missouri, a "**call**" (three hours' pay) due **to** Carrier's violative action which deprived him of work to which entitled.

EMPLOYEES' STATEMENT OF FACTS: This is a "lineup" dispute. Mr. C. L. Hill, Claimant, is the regularly assigned Agent-Telegrapher at Sturgeon, Missouri, assigned Monday through Friday from **7:50** A.M. to **4:50** P.M., with an intervening one-hour lunch period. The incident causing the violation charge occurred after his working hours.

On January 30, 1961, "**at about 16:14** P.M., Track Supervisor Gregory **called the** Train Dispatcher over the Dispatcher's phone to learn the whereabouts of Train Nos. 209 and 212." The quoted portion of the preceding **sentence** is taken from Mr. Johnson's letter of May 9, 1961, to General Chairman Walker, which statement made by Mr. Johnson is **shown** here as evidence that the facts which occasioned the charge of Agreement violation are **not** in **dispute**. Full text of said letter reproduced hereinafter as ORT Exhibit No. 5.

The incident of communication between the Train Dispatcher and Track Supervisor, involving the Telegrapher at Clark, Missouri, is as stated following:

**"Track** Supervisor: Dispatcher Sturgeon.

Dispatcher: Rings Clark, Mo. (instead of answering him).

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

The claim should be dismissed, 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 tha work which he contends belong exclusively to him must be resolved from consideration of tradition, historical practice and **cus-**tom 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 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, 10664, 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 employe possessing that **title** has performed the work in queation. 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 12366 also followed the **same line** of reasoning. We believe the later line of awards should be followed and so we **bold** 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 **Employees within the** meaning of the **Railway** Labor Act, **as** approved June 21, 1934;

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**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 1966.