

Award No. **13507**
Docket No. 'I-E-13150

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 parties' Agreement when, on **December** 22, 1966, it required or permitted employes not covered thereunder to perform work of telegraphers at Logansport and Peru, Indiana.
2. Carrier shall be required to pay a "call" (3 hours' pay) to each; W. **K.** Martin, Agent-Telegrapher at Logansport; and J. A. Bolner, Telegrapher at Peru.

EMPLOYES' STATEMENT OF FACTS: The facts of the incident which occasioned the charge of Agreement violation and resultant **claim** can best be shown by reproduction of the body of the appeal letter sent to Mr. F. A. Johnson, Manager of Personnel, by General Chairman **H. R.** Walker, on **April 10, 1961:**

"**Claim** has been presented to Mr. F. C. Flynn, Superintendent, Montpelier, Ohio declined by him and is herewith submitted to **you** for settlement.

Carrier violated the Agreement when on Thursday, the 22nd of **December** 1960 it caused, required and permitted Clerk Jack **Wally** at **Logansport**, Indiana and Clerk Jim **Wahling** at Peru, Indiana to perform work of telegrapher at Logansport and Peru.

Carrier shall compensate **W.** K. Martin, Agent-Telegrapher, **Logansport**, one call, three (3) hours at straight time rate of \$2.73 **per hour**. Total amount of claim **\$8.19**.

Carrier shall compensate J. A. Bolner, Telegrapher, Peru, Indiana, **one** call, three (3) hours at straight time rate of \$2.63 per hour. Total amount of claim \$7.69.

The Railway Labor Act provides **definite** procedures for the handling of **requests** for change in existing agreements relating to rates of pay and working conditions—see Section 6, Section 5(a), and Sections 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 or working conditions. This Board has no authority to add to or change or eliminate any rules of existing agreements or to place the parties **in any position** other than that in which they have placed themselves 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 transmit or receive **“messages or reports of record”** by telephone nor have they agreed that a telegrapher will be paid a **“call”** as provide in Rule 5 of the telegraphers’ agreement when other than telegraphers transmit or receive **“messages or reports of record”** by telephone and when Claimant Bolner is on duty and under pay at the time for which claim for call is made.

In order to **sustain** this claim this Board **not only** must ignore the facts presented in connection with the occurrence involved but also the bounds of its authority and 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’ **agree-**ment 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 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 **re-**solved 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 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, 10604, 10581, 19493** and others). In other words, there is no presumption of exclusivity-at least in certain areas-baaed 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 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.

BINDINGS: 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 **Adjnatment** 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.**