

Award No. 13508

Docket No. TE-13283

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:

CLAIM NO 1

1. The Carrier **violated** the terms of an Agreement between **the** parties hereto when on February **15,1961**, it permitted or required Footboard Yardmaster Joe Hayes, an employe not covered by said Agreement at Lafayette, Indiana, to perform the work of a **Telegrapher**.

2. The Carrier **shall**, because of the violation set out in Paragraph **1** hereof, **compensate** Telegrapher R. L. **Grael**, who was **available** to perform the work, a **Call** in accordance with the provisions of Rule **5 (b)**.

CLAIM NO. 2

1. The Carrier violated the **terms** of an Agreement between the parties hereto when *on* February 24, 1961, it permitted or required Clerk Reid, an **employe** not covered by said Agreement at Lafayette, **Indiana**, to perform the work *of* a Telegrapher.

2. The Carrier shall, because of the violation set **out** in Paragraph **1** hereof, compensate Telegrapher J. L. Peters, who was available to perform the work, a Call in accordance with the provisions of Rule **5 (b)**.

CLAIM NO. 3

1. The Carrier violated the terms of an Agreement between the parties **hereto** when on March 9, 1961, it permitted *or* required Clerk Brooks, an **employe** not covered by said Agreement at Lafayette, Indiana, to perform the work of a Telegrapher.

2. The Carrier **shall**, because of the violation set out in Paragraph 1 hereof, compensate Telegrapher R. **L. Grauel**, who was **available** to perform the work, a Call in accordance with the provisions of Rule 5 (b).

**EMPLOYEES' STATEMENT OF FACTS:** There is *in* evidence **an Agreement** by and between the parties hereto, effective September 1, 1955, and as amended.

At *page* 26 of this Agreement are **listed the** positions at Lafayette, Indiana, the **locale** of these disputes, on the effective date of said Agreement. The **listing** reads:

#### MONTPELIER DIVISION

##### Telegraphers

Location	Title	Rate Per Hour
Lafayette	1st T	<b>\$1.85½</b>
	2nd T	<b>1.85½</b>

In an Agreement between these <sup>same</sup> parties, effective November 1, 1946, at page 21, the position **listing** for Lafayette is as **follows**:

#### MONTPELIER DIVISION

##### Telegraphers

Location	Title	Rate Per Hour
Lafayette	1st T	<b>\$1.08½</b>
	2nd T	<b>1.08½</b>
	3rd T	1.08%

On a date not shown in the record the Carrier discontinued **the** third shift telegrapher's position at Lafayette; and thereafter rearranged the hours of service at Lafayette as follows:

First Shift — **6:30 A. M. to 2:30 P. M.**  
 Second Shift — **6:30 P. M. to 2:30 A. M.**

#### GENERAL FACTS

The following are general facts applicable to the three claims incorporated into **this** submlsion.

**Lafayette**, Indiana is located on the Second District of the Carrier's Montpelier Division. This office is under the supervision of the Assistant Superintendent located at Peru, Indiana. Peru is also the train **dispatching** office for this Division.

The Carrier's facilities at Lafayette, insofar as pertinent here, **consists** of **a** freight office and a passenger station, located approximately one block apart. The telegraph and train order office is located in the passenger station. Company and commercial telephones are located both in the passenger station and the freight house. In addition, company telephones are located in the yard at various points.

or reports of record" by telephone and when Claimant **Grauel** in Claim No. 1 is on duty and under pay at the time for which claim *for call* is made.

In order to sustain these claims this Board not only must ignore the facts presented in connection with the occurrences **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' agreement does not contain.

The claims 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 **re-served** 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 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 positions or titles, **guidance** must be obtained from a consideration of custom, **tradition** and practice on the property (see *Awards* 10970, **10951**, **10918**, 16604, **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, after giving ~~the~~ parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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**;

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.