

Award No. 13742
Docket No. TE-13256

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

SOUTHERN PACIFIC COMPANY
(Texas and Louisiana Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific Lines in Texas and Louisiana (Texas and New Orleans), that:

1. The Carrier violated the Agreement between the parties hereto when it permitted or required employes not covered by said Agreement to transmit messages of record over the telephone at the station locations and on the dates hereinafter set forth:

Claim No. 1 - Kirby, Texas - February 15, 1961

Claim No. 2 - Marion, Texas - February 23, 1961

Claim No. 3 - Marion, Texas - March 1, 1961

Claim No. 4 - Marion, Texas - March 2, 1961

Claim No. 5 - Marion, Texas - March 3, 1961

2. The Carrier shall, because of the violations set out in Item 1 hereof, compensate the following idle employes on the San Antonio Seniority District for one day's pay, (8) hours, at the pro rata rate Telegraphers' rate on the San Antonio District:

Claim No. 1 - W. R. Stewmon

Claim No. 2 - W. E. Murrell

Claim No. 3 - M. V. Shirk

Claim No. 4 - W. E. Murrell

Claim No. 5 - S. J. Imburgin

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties hereto effective December 1, 1946, and as amended.

"No employes other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call." (Emphasis ours.)

We wish to emphasize that the only rule covering train orders applies to stations where telegraphers are employed.

Carrier suggests this entire case hinges about the rights of Maintenance of Way Employees to use the telephone in requesting necessary train order protection for the following day. In each of these cases, there was no telegrapher employed at the location, and it followed the practice that has been in effect on this property some fifty years, and still is in effect. No case has ever been appealed to the Third Division, NRAB, on this property involving this proposition, and the full issue before the Board in this case is whether or not the track foreman can use the telephone at a point where a telegrapher is not employed, for the purpose of having train order placed to protect his work.

The Carrier has no intention of changing the working conditions without agreement and has never been faced with the necessity of arguing about the transmittal of information regarding track orders to the next telegraph office.

Carrier respectfully requests a denial of this case, since it violates no part of the agreement.

OPINION OF BOARD: The issue is whether the Agreement was violated when a Track Foreman telephoned information from a blind siding to the nearest telegraph office and thus enabled the nearest telegrapher to prepare and transmit messages concerning issuance of Form Y Orders or slow orders. Telegraphers argue that the information supplied by the Track Foreman was a communication of record; therefore, its transmittal was work exclusively reserved to Telegraphers.

The Track Foreman did not transmit a communication of record within the contemplation of the Agreement. All he did was to convey information peculiarly within his knowledge upon receipt of which the telegrapher drafted and transmitted the necessary communications of record to afford protection for the work gang. No telegrapher could prepare such communications without first receiving information from the Track Foreman. We will deny the Claim.

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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION**

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

Dated at Chicago, Illinois, this 23rd day of July 1965.