

Award No. 13748
Docket No. TE-13323

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Peyton M. Williams, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly 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. The Carrier violated the terms of an Agreement between the parties hereto when at 3:43 P. M., Tuesday, March 7, 1961, it permitted or required Clerk Brooks, an employe not covered by said Agreement, to perform work of wire testing at Lafayette, Indiana at a time when no telegrapher was on duty.

2. The Carrier shall, because of the violation set out in paragraph one hereof, compensate telegrapher R. L. Gaul, 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 to this dispute effective September 1, 1955, and as amended.

At page 26 of this agreement (Rule 27) is listed the position existing at Lafayette, Indiana, on the effective date thereof. The listing reads:

Location	Title	Rate Per Hour
Lafayette	1st T	\$1.85½
	2nd T	1.85½

At page 21 of an agreement between these same parties, effective November 1, 1946, are listed the positions existing at Lafayette, Indiana, on the effective date of said agreement. This listing reads:

Location	Title	Rate Per Hour
Lafayette	1st T	\$1.08½
	2nd T	1.08½
	3rd T	1.08½

The claim is without merit and should be dismissed, and if not dismissed, denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner alleges that at 3:43 P. M. on Tuesday, March 7, 1961, wire testing on the teletype line was performed by a clerk — that this work was proper work for a telegrapher — that since Claimant was available for the work in question, but was not called, a violation of the agreement resulted, and that Claimant is entitled to receive payment for a "call."

In support of, or in defense to, as the case may be, their respective positions, Petitioner and Carrier rely on statements of persons, whom, it is asserted, have first hand knowledge of the alleged event. Unfortunately, and in violation of Circular I of this Board, during the processing of the claim on the property, neither party saw fit to present to the other the statements which they have given to us in support of, or defense to, this claim.

Applying the requirements of Circular I, we have no choice but to find that this record contains no probative proof to support Petitioner's allegation of the wire test of March 7, 1961. When the statements of the person having knowledge of the facts are stricken from the record, as they must be, the record is then reduced to a presentation of assertions by Petitioner that the event occurred, followed by counter-assertions by Carrier that the event did not occur.

Being unable to definitively find that a wire test did, or that it did not occur, we must find that Petitioner has failed to prove a violation of the agreement, and we will dismiss 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 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 Carrier did not violate the Agreement.

AWARD

Claim dismissed.

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.