



Award No. 14439  
Docket No. TE-12207

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

David Dolnick, Referee

**PARTIES TO DISPUTE:**

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

**LOUISVILLE AND NASHVILLE RAILROAD COMPANY**  
(N.C.&St.L. District)

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Louisville and Nashville Railroad (NC&StL District), that:

1. Carrier violated the agreement between the parties when on July 8, 1959, it required or permitted an employe not covered by the agreement to receive and copy a message at Chattanooga, Tennessee (General Freight Agent's Office).

2. Carrier shall compensate R. W. Muse, senior, idle telegrapher, in the amount of a day's pay (\$18.64).

**EMPLOYEES' STATEMENT OF FACTS:** The agreements between the parties are available to your Board and are by this reference made a part hereof.

The violation here involved occurred at Chattanooga, Tennessee in the General Freight Agent's Office located at 120 West Ninth Street adjacent to Union Station which is located at 110 West Ninth Street. On July 8, 1959, a clerk in the General Freight Agent's Office, not covered by the Telegraphers' agreement, performed the work of a telephone operator as listed in the Scope Rule of the Telegraphers' agreement. He received and copied a message or report covering all cars billed out and shipped during the month of January from the agent at Whitwell, Tennessee. The report read as follows:

"W. Shipper, Tennessee Products & Chemical Corp.  
118 cars to Republic Steel Corp.  
Alabama City, Alabama. L&N Chattanooga. TA&G

9 cars to Cristy Coal Co., Murfreesboro, Tennessee  
1 car to Ledford Coal Co., Chattanooga, Tennessee  
3 cars to Ryan Coal Co., Chattanooga, Tennessee  
2 cars to East Lake Coal Co., Chattanooga, Tennessee

After completing his investigation of the facts involved, the Director of Personnel wrote the General Chairman under date of December 24, 1959, quoted below, declining the claim:

**"LOUISVILLE AND NASHVILLE RAILROAD COMPANY  
Office of Director of Personnel**

Louisville, Kentucky  
December 24, 1959  
B-730

Mr. J. T. Burch  
General Chairman, ORT  
1711 Woodland Street  
Nashville, Tennessee

Dear Sir:

This refers to your letter of November 30, 1959 appealing claim in behalf of R. W. Muse, regular assigned operator-clerk, Tullahoma, for payment of eight hours at the minimum telegraphers' rate, Chattanooga Division, based on alleged violation of the telegraphers' agreement by an employe in the General Agent's office at Chattanooga allegedly calling the agent at Whitwell on the railroad telephone July 8, 1959 and receiving information for forwarding report for the month of January.

According to our investigation no one in the General Agent's office requested such information over the telephone, or any other information which was made a matter of record and which was not confirmed by message, on July 8, 1959.

The claim is therefore respectfully declined.

Yours truly,

/s/ W. S. Scholl  
Director of Personnel."

On August 30, 1957, by authority of the Interstate Commerce Commission, in Finance Docket 18845, The Nashville, Chattanooga and St. Louis Railway was merged into the Louisville and Nashville Railroad Company.

The working agreements between each of the railroads and its telegraphers, has to date, been continued in effect. The L&N agreement is applicable to those employes on what is known as "L&N District," former L&N territory. The NC&StL agreement is applicable to what is known as the "NC&StL District," former NC&StL territory.

Copies of the applicable NC&StL telegraphers' agreement, which became effective September 1, 1949, are on file with this Division.

**OPINION OF BOARD:** It is axiomatic that the burden of establishing facts upon which to base a valid claim rests with the Petitioner.

Carrier denied the alleged occurrence upon which this claim was based. The Employes then made no effort to refute the Carrier's denial, therefore, they failed to establish any factual basis for the claim. Accordingly, it must be denied.

**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 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 20th day of May 1966.