

Award No. 14514
Docket No. TE-12733

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYES UNION
(FORMERLY THE ORDER OF RAILROAD TELEGRAPHERS)**

KENTUCKY & INDIANA TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Kentucky & Indiana Terminal Railroad, that:

1. Carrier violates and continues to violate the Agreement between the parties when, commencing July 12, 1960, it requires or permits employees not covered by the Agreement to receive and copy messages, consists, etc., formerly received and copied by telegraphers at "YD" Office.

2. Carrier shall compensate the senior idle telegrapher, extra in preference, in the amount of a day's pay (8 hours) on each date this violation occurs, commencing July 12, 1960, and continuing thereafter until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: The Agreement between the parties, effective June 15, 1945, as amended and supplemented, is available to your Board and is, by reference, made a part hereof.

The Kentucky & Indiana Terminal Railroad is a terminal railroad located in and around Louisville, Kentucky, performing switching service in connection with the trunk line railroads entering that city, viz B&O, Monon, Southern, IC, Pennsylvania and L&N.

The Carrier maintains a freight yard facility at Youngstown, Kentucky, where there is a telegraph office designated as "YD" Office. There are three seven-day positions in "YD" Office, providing continuous communication service around the clock. The occupants of the telegrapher positions at "YD" handle all communications necessary for this facility, including "block consists" from the Southern Railway. For many years prior to July 12, 1960, Southern Railway operators at either Danville, Kentucky or Harrodsburg, Kentucky, transmitted these block consists to the K&I operator at "YD." Examples of these consists handled prior to July 12, 1960, are attached hereto as ORT Exhibit 1-A.

Beginning with July 12, 1960, Southern Railway yard clerks at Danville transmitted the block consists to K&I yard clerks. Examples are attached hereto as ORT Exhibit 1-B.

A change was made about August 11, 1960, when the Southern Railway

154, when that train is entering Louisville.

OPINION OF BOARD: This case involves the application of a Scope Rule which is general in nature. The work in question is that of handling messages containing block consists of incoming Southern Railway trains.

Prior to July 12, 1960, the record clearly reflects that the uniform practice was that the Southern Railway operator at Danville or Harrodsburg, Kentucky, would transmit the block consists to the operator of Carrier at Youngstown Yard. There is no showing that any employees other than those covered by the Telegraphers' Agreement handled such work for Carrier before July 12, 1960. Under such circumstances we hold that such work was the property of the Telegraphers and could not be delegated to others without violating the agreement between the parties. See Award 331.

Relative to the monetary part of the claim we face the question of whether or not a punitive award would be appropriate herein. No actual loss was sustained since an operator was on duty at all times and could easily have performed the chore.

As a matter of fact, Claimants only learned of Carriers change in policy when the operator on duty called the Southern operator at Danville, soliciting the consists which were denied. Thereafter, three new methods of handling the consists were tried before Carrier settled on the procedure of allowing its yardmaster to obtain the information through monitoring radio conversations between Southern Railway personnel.

Carrier endeavors to justify its violation of the agreement with the totally insupportable argument that it "has no jurisdiction or control over how employees of other carriers communicate with the K&IT." For who receives the communication at the K&IT is within the exclusive authority of Carrier, subject only to the restrictions of its agreements with employees. The agreement with Claimants is controlling herein and should be respected.

The monetary claim is denied in the instant case, without prejudice to the right of Claimants to file additional claims for damages should the matter not be resolved consistent with this Opinion. See Award No. 10767.

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 violated as alleged.

A W A R D

Claim sustained in conformity with Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of June, 1966.

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