

Award No. 15898
Docket No. TE-14689

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

1. Carrier violated the Telegraphers' Agreement when on the 27th day of June, 1962, it caused, required or permitted E. H. Rutledge, conductor, an employe not covered by the Telegraphers' Agreement, to perform the work of transmitting communications of record by telephone at Cordova, Alabama, after the agent-telegrapher was off duty.

2. Carrier shall compensate B. J. Thomas, agent-telegrapher, Cordova, Alabama, for one call, two hours and forty minutes, at time and one-half pro rata rate for the violation set forth above.

EMPLOYEES' STATEMENT OF FACTS:

B. J. Thomas is the regular assigned Agent-Telegrapher at Cordova, Alabama. His assigned hours are 8:00 A. M. to 5:00 P. M. with one hour for lunch. His work week is Monday through Friday with assigned rest days of Saturday and Sunday. On Tuesday, June 26, 1962, at 11:24 P. M., the Dispatcher talked to Conductor Rutledge on the Dispatcher's line and stated:

"Cap, he don't answer — how far you thing you are going to get on that wait order?"

Conductor Rutledge answered:

"I can make Cordova, I will call you when I get to Cordova — How is that?"

Dispatcher:

"That is fine, Thank You."

At 12:07 A. M., Wednesday, June 27, 1962, over the Train Dispatcher's telephone, Conductor Rutledge of the Parrish Mine Run had arrived at Cordova, Alabama. Conductor Rutledge said:

"Dispatcher."

rule. Rule 10 provides a method for paying employes for service performed, and claimant performed no service. Rule 18 pertains to seniority of employes, and has no application whatsoever in this case.

The claim is unsupported by any rule or provision in the Telegraphers' Agreement, and it is respectfully declined."

The case was discussed by the parties in conference on February 27, 1963, at which time carrier's previous declination of the claim was reaffirmed.

The agreement between carrier and its employes as represented by The Order of Railroad Telegraphers, revised effective September 1, 1949, includes the following rules:

"RULE 1. SCOPE

(a) This agreement applies to all telegraphers, telegrapher-clerks, telephone operators (except telephone switchboard operators), agent-telegraphers, agent-telephoners, towermen, levermen, block operators and staffmen, operators of mechanical telegraph machines, wire chiefs, assistant wire chiefs, or analogous positions hereafter established; also such station agents and assistant station agents and ticket agents as are listed herein.

(b) The word 'employee' as used in this rules will apply to all the foregoing classes, and employes will be classified according to duties performed."

"RULE 44.

TERMS OF AGREEMENT

This agreement supersedes and cancels all former agreements, but does not, except where rules are changed, alter former accepted and agreed to practices, working conditions or interpretations.

This agreement is revised as of September 1, 1949 and shall continue in effect until thirty (30) days' written notice is given by either party to the other of desire to revise or modify in accordance with the provisions of the Railway Labor Act."

OPINION OF BOARD: The Petitioner alleges that a telephone conversation held by the Train Dispatcher and the Conductor at a point where an Agent-Telegrapher was employed but not on duty, constituted work which had by tradition, custom and practice been reserved to his classification of employe. He further alleges that this conversation affected the movement of trains and as such was the type of work regularly performed by him when he was on duty. Since Carrier failed to call him to perform this work, he has filed the instant claim asking this Board to grant him a call payment.

There is no evidence in the record that the substance of the conversation was made a matter of record, although in its submission, the Organization has presented what purports to have been the conversation between the Dispatcher and the Conductor. However, no official record, we reiterate, was made.

Petitioner relies principally on the Scope Rule of the Agreement and recognizing that it is general in nature, asserts that the employes covered therein, have traditionally, historically and customarily performed the work involved in this case to the exclusion of all others. We find no such evidence in this record which would lead us to that conclusion. Since Petitioner has failed to present sufficient evidence to warrant a sustaining award, we will deny the claim.

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 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 31st day of October 1967.