

Award No. 15899
Docket No. TE-14719

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 29th day of September 1962, it caused, required or permitted Conductor I. J. Drummonds on Train No. 65 to perform the work of transmitting a communication of record to the train dispatcher after Agent-Telegrapher J. F. Carnes was off duty. Carrier violated Rule 1, Scope, of the Agreement.

2. Carrier shall compensate J. F. Carnes, Agent-Telegrapher, Villa Rica, Georgia, 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: J. F. Carnes is the Agent-Telegrapher assigned to the position at Villa Rica, Georgia. He lives in Villa Rica and is subject to call when the service demands. On September 29, 1962, a Saturday, at 11:30 A. M., Conductor I. J. Drummonds transmitted the following message:

"I. J. Drummonds, Conductor Train No. 65 I am leaving Villa Rica now."

The Carrier made no attempt to call Claimant Carnes to perform the work of the Telegrapher and claim was made for a call for Agent-Telegrapher Carnes for the work performed on Saturday, September 29, 1962.

The claim was appealed to the highest officer designated by the Carrier and declined by him. Claim is now properly before your Board for final adjudication.

CARRIER'S STATEMENT OF FACTS: Villa Rica, Ga., is located 33 miles west of Atlanta, Ga., on the East End of carrier's Birmingham Division, which extends from Birmingham, Ala., eastwardly to Atlanta, Ga. In September 1962, J. F. Carnes, the claimant in this dispute, was the regularly assigned

The case was discussed by the parties in conference on July 25, 1963, at which time carrier's previous declination of the claim was reaffirmed.

The agreement between carrier and its employees 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 these rules will apply to all the foregoing classes, and employees 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 Conductor transmitted a communication of record to the Train Dispatcher at a point where an Agent-Telegrapher was employed, but was not on duty. The message, according to Petitioner, was as follows:

"I. J. Drummonds, Conductor Train No. 65 I am leaving Villa Rica now."

The Carrier made no attempt to call the claimant to transmit the above message, hence the instant claim was made for a call. The Petitioner relies principally on the Scope Rule, which admittedly is general in nature, and hastens to state that this type of message has customarily, traditionally and historically been handled by the telegraphers to the exclusion of all others. Petitioner does not contend that the cited message was a train order but merely a communication affecting the movement of trains. Petitioner also refers us to a 1929 letter, which is an appendage to Rule 31, the Standard Train Order Rule, but we do not consider that applicable to what Petitioner has characterized as a communication of record. We distinguish the latter from a train order which is the subject of the 1929 letter.

Carrier submits that no record was made of the cited message and indeed avers that the Dispatcher could not recall whether or not such a conversation took place.

As we view the record, the Scope Rule is the rule upon which primary reliance has been placed. It is general in nature and Petitioner must present a preponderance of evidence to demonstrate that the work involved has historically, customarily and traditionally been performed by his classification of employe to the exclusion of all other employes. Such evidence is lacking. 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.