

Award No. 15900
Docket No. TE-14764

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 26th day of September 1962, it caused, required or permitted Conductor E. H. Rutledge of the Parrish Mine Run to block his train with Trainmaster W. C. Johnson at Parrish against Train No. 91 at Parrish over the dispatchers' telephone. Conductor Rutledge and Trainmaster Johnson, both employes of the Company not covered by the Telegraphers' Agreement, violated Telegraphers' Agreement Rule 1, Scope, in performance of this service to the Company.
2. Carrier shall compensate H. W. Cagle, Agent-Telegrapher, Parrish, Alabama, for two hours and forty minutes at time and one-half pro rata rate, one (1) call for such violation.
3. Carrier shall compensate J. A. Crowe, senior idle extra telegrapher on this date, for one day eight (8) hours at the minimum rate for telegraphers or telephoners on this division for this violation.

EMPLOYEES' STATEMENT OF FACTS: On September 26, 1962, beginning at 1:02 A.M., Trainmaster W. C. Johnson performed the work of a block operator at Parrish, Alabama. Claimant H. W. Cagle, the agent-telegrapher assigned to Parrish, Alabama, was not on duty nor was he called to perform the work at that time. Conductor E. H. Rutledge was in charge of the Parrish Mine Run and was located at Blossburg Junction Mile Post 813.8 when he performed block operator work with Trainmaster Johnson. Trainmaster Johnson controlled the movement of Train No. 91 by verbally telling Conductor Rutledge, "I am holding the coal train No. 91 at Parrish until the Parrish Mine Run gets here." With this positive block, Conductor Rutledge moved the Parrish Mine Run between Blossburg Junction to Parrish. This is work of a block operator under the Scope Rule of the Telegraphers' Agreement.

(b) For work in advance of and which continues to starting time of regular work period, employes will be paid a minimum allowance of one hour at time and one-half rate for one hour or less, additional time calculated on minute basis at same rate."

**"RULE 31.
HANDLING TRAIN ORDERS**

No employe other than covered by this agreement and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available or can be promptly located, except in emergency, in which case the operator will be so advised by the Chief Dispatcher and will be paid for the call. At offices where two or more shifts are worked, the operator whose tour of duty is nearest the time such orders were handled will be entitled to the call.

NOTE: See letter of October 19, 1929 on page 42, relative to use of telephones by conductors."

**"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: There are two locations involved in this dispute, one being at Parrish, where a telegrapher is employed, the other being at Blossburg Junction where no telegrapher is employed.

The Trainmaster, using a telephone at Parrish, was discussing operations with the dispatcher at Birmingham. The Conductor, using a telephone at Blossburg Junction, came in on the dispatcher's line and inquired about opposing train No. 91. The Trainmaster advised the Conductor that he was at Parrish and would provide flag protection against Train No. 91, and for him to bring his train to Parrish.

We find that the Parrish Claim should be sustained in that the message did involve the movement of trains, was a train order within the contemplation of Rule 31, and although not made a matter of record did violate Rule 31. An Agent-Telegrapher was employed at Parrish and should be compensated as claimed. (See Award 12305 -- Kane.)

Since no Agent-Telegrapher was employed at Blossburg Junction Rule 31 is inapplicable. Petitioner therefore, relies on the Scope Rule. This Rule is general in nature and under the exclusivity doctrine, he must show by a preponderance of evidence that he was historically, traditionally and custo-

marily performed the work in question to the exclusion of all others. Such probative evidence is lacking and 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 Claims are denied in part and sustained in part.

AWARD

Claim 1 sustained.

Claim 2 sustained.

Claim 3 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.