

Award No. 15903
Docket No. TE-15559

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 Transportation-Communication Employees' Union (formerly The Order of Railroad Telegraphers) on the Southern Railway, that:

1. Carrier violated the terms of the Telegraphers' Agreement when on July 12, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, August 1, 3, 5, and 7, 1963, it caused, required or permitted employees not covered by the Agreement to handle communications of record at Belmont, North Carolina, therefore refusing or declining to allow the entitled employee, as covered by the Agreement, employed at Belmont, North Carolina, to handle the communications.

2. Carrier shall compensate Claimant J. C. Cash, agent-telegrapher, Belmont, North Carolina, the entitled employee employed there covered by the Agreement, one minimum call of two hours and forty minutes for each violation occurring on week days of Monday through Saturday inclusive, and three hours for each violation occurring on Sunday, both at time and one-half times the pro rata rate of pay for the position of agent-telegrapher, Belmont, North Carolina, for each date, as herein listed, that a violation occurred, or a total of twenty (20) calls.

EMPLOYEES' STATEMENT OF FACTS: At Belmont, North Carolina, the Carrier maintains one position of Agent-Telegrapher with assigned hours of 7:00 A. M. to 4:00 P. M., Monday through Friday, with rest days of Saturday and Sunday. Claimant J. C. Cash is the regular assigned Agent-Telegrapher at this location and as he is the Agent at a one-man station performs all the work at this location.

On the dates and times cited in the claim and shown in the factual statement submitted with the original claim letter of August 23, 1963, the Carrier required or permitted employees not covered by the Agreement to handle communications of record at Belmont, North Carolina, at times when Claimant Cash was not on duty. The Carrier has not denied, in the handling of the claim

phone 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: This case consists of twenty claims wherein the conductor conversed by wayside telephone with the Dispatcher on matters pertinent to his train and other trains. Petitioner asserts that the Claimant Agent-Telegrapher should have been called to handle these twenty messages. Failure by the Carrier to call him constituted a violation of the Scope Rule and the 1929 letter appending to Rule 31, among other rules.

We view the 1929 letter, which is incorporated in the basic contract as an appendage to Rule 31, the standard Train Order Rule, as pertaining only to Train Orders. The Petitioner does not allege in this case that the twenty messages were train orders merely that they were "communications of record." Carrier on the other hand, insists that these messages were simply exchanges of information between the Conductor and the Dispatcher and that such exchanges have been taking place for over 40 years. There is no evidence that any of the twenty messages were made a matter of record.

Since the standard Train Order Rule and the 1929 letter are inapplicable in these situations confronting us, Petitioner of necessity must and does rely heavily on the Scope Rule. As we have said in many other cases similar to, as well as identical with this case, the Scope Rule is general in its language. It does not define the work to be covered by the Agreement. Hence Petitioner has the burden of demonstrating by substantial evidence that the work involved has by custom, tradition and history been reserved to employees of its craft to the exclusion of all other employees. Such evidence is lacking. We still 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.