

Award No. 16263
Docket No. TE-14960

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(SUPPLEMENTAL)

John J. McGovern, Referee

PARTIES TO DISPUTE:

**TRANSPORTATION-COMMUNICATION EMPLOYES 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 on the 23rd day of November, 1962 when it caused, permitted or required Brazil to OS a train.

2. Carrier shall compensate senior idle extra telegrapher by paying him for 8 hours, one day at the minimum rate of pay for telegraphers or telephoners on the Birmingham Division for this violation.

EMPLOYES' STATEMENT OF FACTS: On November 23, 1962 at 7:10 P. M., Conductor Brazil, while at Burnwell, Alabama, used the telephone to report Train No. 158 to the dispatcher. The exact communication was as follows:

"Dispatcher — This is Brazil at Burnwell. How is your No. 158? He was topping hill at Bryan few minutes ago. O. K., I hear him coming now."

Because of this train report, or OS, by Conductor Brazil while at Burnwell on Train No. 158, which was arriving at Burnwell, claim was made in behalf of the senior idle telegrapher for violation of the Agreement on November 23. 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: Burnwell, Ala., where the alleged violation took place, is located on the West End of carrier's Birmingham Division, about 27 miles west of 27th Street yard at Birmingham, Ala. Burnwell is a blind siding, where no telegrapher or anyone else is employed by the carrier.

While at Burnwell at about 7:00 P. M. on Friday, November 23, 1962, local freight Conductor Brazil, using a wayside booth telephone at the blind siding, contacted the train dispatcher on duty at Birmingham and inquired

"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: The issues in this case are essentially the same as those decided by Awards 15903 and 15904, where the same parties and agreement were involved. This claim, therefore, will be denied.

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 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 30th day of April 1968.

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