



Award No. 16493
Docket No. TE-15346

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, 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 terms of the Agreement when on Saturday, May 18, 1963, it caused, required or permitted employe or employes of the agency Spartanburg, South Carolina, employes not covered by the Agreement, to perform work that is covered by the Agreement at Wellford, South Carolina.

2. Carrier shall now compensate W. J. Gibby, agent-telegrapher, Lyman, South Carolina, by payment of one call, 2 hours and 40 minutes at time and one-half rate of the position of agent-telegrapher, Lyman, South Carolina, for the violation on Saturday, May 18, 1963. Total due \$10.29.

EMPLOYEES' STATEMENT OF FACTS: Wellford, South Carolina is a one-man agency, which position is under the Telegraphers' Agreement. B. N. Smith is the regular assigned occupant of the agent-telegrapher's position, having assigned hours of 8:00 A. M. to 5:00 P. M., Monday through Friday. His assigned rest days are Saturday and Sunday and are not covered by a regular relief assignment.

On Saturday, May 18, 1963, one of the shippers, namely the Union Bag Company located at Wellford, South Carolina, needed a rush car movement. The Carrier's facts indicate that an attempt was made to call Agent Smith to perform the work on his rest day. When Agent Smith was not located, the Carrier used an employe not covered by the Telegraphers' Agreement at Spartanburg, South Carolina to perform the work at Wellford, South Carolina.

Claim was made in behalf of Agent-Telegrapher W. J. Gibby at Lyman, South Carolina, who was ready and available on his rest day to perform the work on Saturday, May 18, 1963. The claim was appealed to the highest officer and declined by him.

(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 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: Carrier maintains one position at Wellford, South Carolina; its incumbent is Agent-Telegrapher B. N. Smith and it is a five day, Monday through Friday position. On Saturday, May 18, 1963, a customer at Wellford notified Carrier of a rush car movement. Carrier tried to reach Smith to perform the work in connection with covering the car movement, but he was unavailable. Carrier then had an employe not covered by the Telegraphers' Agreement at the next available station, Spartanburg, South Carolina, issue a Memo bill to cover and from which the car was moved from Wellford on that Saturday. On the following Monday, Smith's next regularly assigned work day, Smith did the regular waybill to cover the movement.

To sustain its claim that the Organization had a demand right to the work, the Organization must prove that the work of preparing and issuing the Memo bill done at Spartanburg on May 18th was of a kind which belongs exclusively to the Organization. There is no such proof in the record, and the claim must 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 the Employe 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 19th day of July 1968.

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