



Award No. 16502
Docket No. TE-14475

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arnold Zack, 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 Company, that:

1. Carrier violated the Telegraphers' Agreement when on Tuesday, February 27, 1962, it caused, required and permitted Track Supervisor Mr. J. F. Morrow, an employe not covered by the Telegraphers' Agreement, to copy a lineup showing train locations and movement, on telephone at Shelbyville, Kentucky, from the Dispatcher in Louisville, Kentucky, thereby performing communication work which was a matter of record, and after repeating same to the Dispatcher, handle and make delivery of said lineup at Shelbyville, Kentucky for movement of track motor car between Shelbyville and Floyd Street Tower, Louisville, Kentucky, at 6:03 P. M. and refused to use Claimant B. F. McFarland, Agent-Telegrapher, Shelbyville, who was ready and available, but was not called to perform this service, which was outside his assigned hours.

2. Carrier shall compensate regular assigned Agent-Telegrapher B. F. McFarland, Shelbyville, under Rule 10, Call Rule, for one (1) call (two hours and forty minutes) at one and one-half times the Shelbyville, Kentucky, Agent-Telegrapher pro rata rate of \$2.53 per hour, total \$10.12 for Tuesday, February 27, 1962.

EMPLOYEES' STATEMENT OF FACTS: Shelbyville, Kentucky, is located on the Louisville Division of this Carrier's property. There is a negotiated position of Agent-Telegrapher with assigned hours and work week of Monday through Friday, 8:00 A. M. to 5:00 P. M. Claimant B. F. McFarland is the regularly assigned Agent-Telegrapher at Shelbyville.

On Tuesday, February 27, 1962, at 6:01 P. M., which was a time when the Agent-Telegrapher McFarland was not on duty, Track Supervisor J. F. Morrow came on the Dispatcher's telephone at Shelbyville, Kentucky, and asked for a lineup between Shelbyville, Kentucky, and Floyd Street Tower, Louisville, Ken-

"RULE 10. CALLS

(a) Except as otherwise provided in these rules, employees called to perform work outside of established hours will be paid a minimum of two (2) hours and forty (40) minutes at time and one-half rate for two hours and forty minutes' work or less, additional time calculated on minute basis at time and one-half rate.

(b) For work in advance of and which continues to starting time of regular work period, employees 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."

(Exhibits not reproduced.)

OPINION OF BOARD: At approximately 6 P. M. on Tuesday, February 27, 1962, approximately one hour after agent-telegrapher McFarland had completed his tour of duty at Shelbyville, Kentucky, Track Supervisor J. F. Morrow used a company telephone in his own office to receive and copy a lineup from the dispatcher on duty at Louisville. Organization filed the instant claim for call in pay for work which it asserts should have been performed by the Claimant.

The Organization argues that the Scope Rule reserves the disputed work to employees covered by the Agreement; that this Board has held that copying and delivering train lineups has traditionally been telegraphers' work; and that even if there have been violations of the Claimants' rights in the past, this Board has upheld the right of covered employees to such work despite occasional unauthorized encroachments thereon.

The Carrier argues that track supervisors and other employees outside the Organization have always copied lineups without protest; that the language of the Agreement does not sustain the exclusivity claim of employees to this work; that Organization efforts to change the Agreement to grant such exclusivity have been unsuccessful, and that therefore, in the light of prior Awards of this Board, the Claim must be denied.

This Board has, in a substantial number of awards, held that the petitioner must show by a preponderance of competent evidence, a system wide practice,

custom and tradition of covered employees performing the claimed work to the exclusion of all others. (Perelson 14538.)

The Organization has not met the burden of proof in this case. Track supervisors and others have traditionally received and copied lineups without prior protest from the Organization. Accordingly 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 Employee involved in this dispute are respectively Carrier and Employee 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 25th day of July 1968.