

Award No. 16780
Docket No. TE-14931

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

THE DETROIT & TOLEDO SHORE LINE
RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Detroit and Toledo Shore Line Railroad, that:

1. Carrier violated and continues to violate the terms of an Agreement between the parties hereto at Edison, Michigan when, on March 1, 20 (twice), 22, 25 (twice), 1963; April 1, 2 (twice), 3, 5, 8, 10, 14 through 21, and 23 through 30, 1963; May 1 through 9 and 19, 1963; (38 dates) it permitted or required employes not covered by said Agreement to perform telephone communication work in connection with reporting (OS'ing) trains, transmitting and/or receiving messages relating to the operation of trains or safety of employes, and/or handle (receive, copy and deliver) train orders.
2. Carrier violated and continues to violate the parties' Agreement at Edison, Trenton, Whiting and Denby, Michigan when, on April 22 and 24, 1963 it permitted or required employes not covered by said Agreement to perform telephone communication work in connection with reporting (OS'ing) trains; transmitting and/or receiving messages relating to the operation of trains and/or the safety of employes.
3. Carrier violated and continues to violate the parties' Agreement at Monroe, Michigan when, on March 11, 1963, April 1, 21, 22 and 29, 1963, May 5, 7, 8, 9, 10, 1963 it permitted or required employes not covered by said Agreement to perform telephone communication work in connection with reporting (OS'ing) trains, transmitting and/or receiving messages relating to the operation of trains and/or the safety of employes.
4. Carrier, in addition to all of the foregoing, violated Article V of the Agreement of August 21, 1954 in that the language used to disallow these claims does not conform to the provisions of Section 1 (a) and (c) of Article V of said Agreement.

5. Carrier shall, because of the violations set out in paragraph one hereof, compensate the employes who were deprived of their right to perform the work in question at the locations and on the dates set forth in accordance with the following:

(a) J. H. Brown, idle extra telegrapher, a day's (8 hours) pay at the minimum telegraphers' rate for March 1, 20, 25 (for two tours of duty), April 2, 14, 20 and 29, and May 6, 1963.

(b) H. Turner, idle on his rest day, a day's (8 hours) pay at the rate of the position occupied for March 20, April 1, 2, 8, 15, 16, 23, 30, and May 1, 7, 8, 1963.

(c) T. Rosenbalm, idle on his rest day, a day's (8 hours) pay at the rate of the position occupied for March 22, April 5, 18, 19, 21, 27, 28, and May 4, 5, 1963.

(d) C. Mitchell, idle on his rest day, a day's (8 hours) pay at the rate of the position occupied for April 3, 10, 17, 25, 26, and May 2, 3, 9 and 10, 1963.

6. Carrier shall, because of the violations set out in paragraph two hereof, compensate the employes who were deprived of their right to perform the work in question at the locations and on the dates set forth in accordance with the following:

(a) J. H. Brown, idle extra telegrapher, a day's (8 hours) pay at the minimum rate for April 23, 1963.

(b) H. Turner, idle on his rest day, a day's (8 hours) pay at the rate of the position occupied for April 24, 1963.

7. Carrier shall because of the violations set out in paragraph three hereof, compensate L. E. Ady, a two (2) hour call as provided by the Agreement, for March 11, April 2, 21, 22, 29, and May 5, 7, 8, 9 and 10, 1963.

8. Carrier shall because of the violations in paragraph four hereof, allow the claims as presented.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an agreement by and between the Detroit and Toledo Shore Line Railroad Company, hereinafter referred to as Carrier, and its employes represented by The Order of Railroad Telegraphers, hereinafter referred to as Employes and/or Organization, effective April 17, 1952, and as amended. Included among the several agreements is the National Agreement of August 21, 1954. Copies of said agreements are, as required by law, assumed to be on file with your Board, and are, by this reference, made a part hereof.

For the record, the bargaining unit on this Carrier is very small, less than ten (10) employes.

This Carrier is jointly owned by the Grand Trunk Western Railroad Company and the New York, Chicago and St. Louis Railroad Company and its

operator from October 5, 1961, working only five days per week from 5:00 P. M. to 1:00 A. M. This station was finally closed on September 21, 1963.

Denby, mile post 34.10, is an industrial siding and came into existence about 1955.

Edison, mile post 34.71, is an industrial siding and came into existence about 1923. It contains a small storage yard and is the location of several industries. At the present time we perform round-the-clock switching service for the Monsanto Chemical Company on an every other year basis. The New York Central performs the service on the same basis.

Trenton, mile post 36.82, is an interchange point with the Detroit, Toledo & Ironton Railroad.

Trenton Junction, mile post 37.31, is the location where the New York Central, Detroit, Toledo & Ironton, and The Detroit and Toledo Shore Line all cross at grade. There is a New York Central telegraph operator stationed there who OS's all trains to their respective dispatchers.

Dearoad is an intermediate yard located at River Rouge, Michigan, at the Detroit city limits. None of our local or road switcher trains operate beyond Dearoad. The Train Dispatcher's Office is located at Dearoad.

Since the Shore Line Railroad came into existence about 1903, there has never been a telegraph or operator's office located at any point except Lang, Ohio, and Monroe, Michigan. Communication by conductors with the dispatcher has always been by telephone along the right of way with the exception of Lang and the operator's office at Monroe, Michigan. There are industries in Monroe that are some distance from the operator's office and here again the conductors communicate with the dispatcher by telephone.

All of our Local or road switcher trains operating out of Lang are designated in seven hundred numbers. (Example 701/702, 703/704, etc.) The locals or road switchers operating out of Dearoad are designated in the eight hundred numbers. (Example 801/802, 803/804, etc.) All of our through freight trains are designated in the four hundred numbers.

(Exhibits not reproduced.)

OPINION OF BOARD: The procedural issue of whether or not Carrier complied with the time limit rule (Article V of the August 21, 1954 National Agreement) has been raised by the Organization. In their written disallowance of the claims, Carrier stated, "I can find no basis for your claim." This language followed the statement that the claim was denied. The Organization contends that this language does not constitute a reason for denial. In view of Awards 16576 (Engelstein) and 15726 (Mesigh), this Board can find no merit in the Organization's contention. In Award 16576 this Board held that "there is no basis for the Claim and it is accordingly denied" constituted a sufficient reason for rejection of a claim. "We cannot agree to these claims and therefore deny them," was held to be in compliance with Article V of the Agreement. Similar language was used by Carrier and held to be sufficient in Award 15686 (Dorsey) and many others. Therefore, this dispute will be considered on its merits.

We find that the Scope Rule is general in nature, thereby placing the burden of proving, by a preponderance of evidence a system-wide practice, custom and tradition of covered employes performing the claimed work to the exclusion of all others (Award 16502 --- Zack), on the Claimants. In this case, the Organization has not supported its allegations with the competent evidence required of it in order to formulate and make a *prima facie* case.

These 45 claims have been placed into three separate categories by the parties, to-wit:

- No. 1 - Receiving train orders;
- No. 2 - OS'ing of trains; and
- No. 3 - Transmission of train movement messages.

Categories Nos. 2 and 3 have to do with reports of train movements. The Organization relies on Rule 22 to support its claim concerning train orders. However, Rule 22 is not applicable in this instance for the reason that the record discloses that the involved train orders were copied at points where no telegraphers were employed.

This Board has repeatedly held that naked allegations or conclusions, unsupported by a preponderance of competent evidence, will not support a claim when the burden of proof is on the Claimant. The record in this case is merely a series of allegations and conclusions void of supporting evidence.

For the foregoing reasons, this claim will be denied.

FINDINGS: The Third Division of the Adjustment Board upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 by the Carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 14th day of November, 1968.

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