Award No. 16821

Docket No. TE-14797

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, 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 Telegraphers' Agreement when on the dates of June 21, 22, 25, 28, 29, July 2, 4, 9, 26, 27, 28, 30th, it required or permitted employes not covered by said Agreement to transmit, receive and copy messages of record, as hereinafter recorded.

2. For violations occurring on the dates of June 21, 22, 25, 29, July 2, 4, Carrier shall compensate Claimant C. B. Bailiff, senior idle Telegraphers, for eight (8) hours pay at the former pro rata rate at East Durham, N. C., for each of the above mentioned dates, or a total of $118.08.

3. For violations occurring on the date of June 28, 1962, Carrier shall compensate Claimant H. C. Dollar, Jr., senior idle Telegrapher for eight (8) hours pay at the former pro rata rate of East Durham, N. C., $2.46 per hour, or a total of $19.68.

4. For violations occurring on the date of July 9, 1962, Carrier shall compensate L. E. Whitley, senior idle Telegrapher, for eight (8) hours pay, said compensation to be allowed which is fairly comparable with the rates of other positions of similar class and location, as prescribed in Rule 23 — New Positions.

5. For violations occurring on the dates of July 26, 27, 28, 1962, Carrier shall compensate E. D. Clayton, senior idle Telegrapher for eight (8) hours pay at the former pro rata rate at East Durham, N. C., $2.46 per hour per day for each of the above mentioned dates, or a total of $59.04.

6. For violations occurring on the dates of July 30, 1962, Carrier shall compensate J. W. Siviter, senior idle Telegrapher, for eight (8) hours pay at the former pro rata rate at East Durham, N. C., $2.46 per hour or a total of $19.68.

"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: This claim questions the propriety of permitting non-telegraphers the use of company telephones for transmitting and receiving messages regarding company business. The Organization argues that said duties are exclusively reserved to employes subject to the Revised Agreement effective, September 1, 1949.

A procdural issue is raised by Carrier by invocation of Article V, Section 1(a) of the party's Supplemental Agreement, dated August 21, 1954, and the contention that this claim is based upon a single occurrence predating the filing of this claim by more than sixty days, i.e., the abolishment of the position of Telegrapher-Leverman at East Durham, North Carolina. We regard this "occurrence" as collateral information submitted by the Organization for probative value, and not submitted as the principal occurrence on which this claim is founded. Therefore, the claim is not barred.

An exhaustive review of previous awards cited by the parties, shows ample precedent holding that if Claimant is to prevail, it must be established by Claimant's evidence that the duties in question have customarily and traditionally been performed by telegraphers. This proof is made necessary by the context of the Scope Rule involved, which is of the type we have heretofore referred to as "general." In Award No. 12699 (Yagoda), a case involving the identical parties and Agreement, we held, to wit:

> "The Scope Rule here involved is a general one, listing work only by general occupational designation, containing no job descriptions or guarantees of assignment to specific tasks. It has been well-established by this Board that under such provisions we shall be guided in the determination of work-usurpation claims by the general criterion of whether the disputed work belongs exclusively to Claimants by tradition, custom and practice."

In this regard, also see Award Nos. 11812-11819, 12485, 12701, 12703, 12704, 12705, 12706, 12708, 12710, 12757, 12935, 13243, 13244, 14244, 14341, 14344, 14538 and 15396.

Based upon our consideration of the record, we are unable to find adequate evidence to satisfy Claimant's burden of proof. To the contrary, the evidence shows that the custom and tradition practiced on this property was to carry-out the duties in question by use of employes other than telegraphers. The record shows that telegraphers had never been employed at Durham. The fact

that telegraphers had been employed at East Durham, approximately two miles from the point of alleged violation, does not meet the burden of proof. Said fact would become important only upon sufficient evidence that the work done at Durham was customarily and traditionally performed by telegraphers at East Durham. This has not been proved.

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 19th day of December, 1968.

Keenan Printing Co., Chicago, Ill. Printed in U.S.A.