

NATIONAL RAILROAD ADJUSTMENT BOARD**THIRD DIVISION****(Supplemental)**

Claude S. Woody, Referee

PARTIES TO DISPUTE:**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION****SOUTHERN RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Railway, that:

1. Carrier violated the terms of the Telegraphers' Agreement when on July 9, 18, 19, 24, 25 and 29, 1963, it caused, required or permitted employe at Greenville, South Carolina who is not covered by the Telegraphers' Agreement, to perform communication work, receiving and recording a message or report of record, which belongs to the employes covered by the Agreement.

2. Carrier shall compensate with payment of one day's work, 8 hours, pro rata rate of \$2.67 per hour, to the following extra telegraphers for each date named: J. L. Copeland — July 9; C. H. Calvert — July 19 and 25; W. W. Taylor, Jr. — July 18 and 24; and K. E. Anders — July 29, 1963.

EMPLOYEES' STATEMENT OF FACTS: At Greenville, South Carolina, the Carrier maintains several buildings which lodge various facilities of the Carrier's operation. The telegraph office known as "V" Office is located in the Superintendent of Telegraph's building, which is about 20 feet away from the Chief Dispatcher's location. The telegraphers who were assigned to "V" Office at Greenville, South Carolina handled an RD-1 report for many, many years. At the beginning, the report was handled by telegraph, largely by telegraph circuit No. 7. A few years ago the telegraph wires were removed and after that time the telegraphers handled the RD-1 report by telephone and principally by telephone circuit No. 602 which was installed in 1958 to be used in lieu of the telegraph wires. The RD report was received from offices over the entire railroad division commencing with Chine Grove, North Carolina, the first station of the division to the south. The telegraphers in "V" Office recorded the information they received on Form 178 which is the report of revenue cars loaded and received from connections. After the report was received and completed, the form was given to the Chief Dispatcher for his use in preparing his reports for submission to the other offices of the Carrier.

"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: On July 9, 18, 19, 24, 25 and 29, 1963, Carrier permitted Clerk Williams in the Chief Dispatcher's office at Greenville, to receive and copy RD-1 reports from Concord. Claim is now filed in behalf of telegraphers for the work performed for eight hours on each date the work was performed. The reports were received by telephone, which the Organization contends was work reserved to employees covered by the Telegraphers' Agreement.

The evidence submitted by the Organization includes a sworn statement by R. C. Bolen, the essence of which is to show that, during his fifty years as a telegrapher, he copied and sent by telegraph the RD-1 report. He further recalls that said reports were never handled by anyone other than telegraphers during his tenure. This evidence is of limited probative value for two reasons.

1. R. C. Bolen does not testify as to practice on the property at Greenville, the location in question.
2. R. C. Bolen has not been employed by Carrier since 1957.

Carrier has submitted as its evidence the sworn statements of five employees, some of whom are employed at Greenville. The joint statement signed by Clerks Maffett and Robinson constitutes a direct contradiction of the Organization's evidence, insofar as the latter evidence pertains to practice at Greenville.

The burden of proof to show that by practice, custom and tradition, the work in question was reserved exclusively to employees covered by the telegraphers' Agreement, is upon the Organization. Based upon our consideration of the entire record, we cannot find evidence sufficient to sustain the claim.

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 Employees involved in this dispute are respectively Carrier and Employees 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.