

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

GEORGIA SOUTHERN AND FLORIDA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union (Formerly The Order of Railroad Telegraphers) on the Southern Railway, that:

1. Carrier violated the Telegraphers' Agreement when on Saturday, May 18, 1963 at 3:43 A. M., it required or permitted the yardmaster at Simpson Yards, Florida to communicate by telephone with the train dispatcher at Macon, Georgia and transmit the following communications, an OS of Train No. 153 as follows: No. 153 arrived at 3:20 A. M. off 3:25 A. M., in with 87 loads, 59 empties, 5849 tons, no produce, no universals, 16 FEC's at 7:30 A. M. and 31 SAL's at 5:45 A. M. Hereinafter referred to as Violation No. 1 in claim letter.

2. Carrier violated the Telegraphers' Agreement when on Sunday, May 19, 1963 at 4:06 A. M., it required or permitted the yardmaster at Simpson Yards, Florida to communicate by telephone with the train dispatcher at Macon, Georgia and transmit the following communications, an OS of Train No. 153 as follows: "No. 153 arrived 3:50 A. M., off 4:05 A. M., in with 88 loads, 57 empties, 5925 tons, no universals, 2 produce at 4:30 A. M., 19 FEC's at 6:30 A. M., 28 SAL's at 7:45 A. M." Hereinafter referred to as Violation No. 2 in claim letter.

3. Carrier violated the Telegraphers' Agreement when on Monday, May 20, 1963 at 11:26 P. M., it required or permitted the yardmaster at Simpson Yard, Florida to communicate by telephone with the train dispatcher at Macon, Georgia and transmit the following communication, an OS of Train No. 153 as follows: "No. 153 arrived 11:00 P. M., off 11:10 P. M., no produce, no universals, 9 FEC's at 11:30 P. M. and 7 SAL's at 11:50 P. M." Hereinafter referred to as Violation No. 3 in claim letter.

4. Carrier violated the Telegraphers' Agreement when on Friday, May 24, 1963 at 2:57 A. M., it required or permitted Yard Clerk Tiller at Simpson Yards, Florida to communicate by telephone with the train dispatcher at Macon, Georgia and transmit the following com-

munication, an OS of Train No. 153 as follows: "No. 153 arrived 2:35 A. M., off 2:40 A. M., in with 78 loads, 26 emptys, 4867 tons. Placed 2 produce at 3:15 A. M." Hereinafter referred to as Violation No. 4 in claim letter.

5. Carrier violated the Telegraphers' Agreement when on Saturday, May 25, 1963 at 6:07 A. M., it required or permitted Road Foreman of Engines L. J. Price at Simpson Yards, Florida, to communicate by telephone with the train dispatcher at Macon, Georgia and transmit the following communication, an OS of Train No. 59 as follows: "No. 59 arrived 5:55 A. M., off 6:00 A. M." Hereinafter referred to as Violation No. 5 in claim letter.

6. Carrier violated the Telegraphers' Agreement when on Sunday, May 26, 1963 at 2:06 A. M., it required or permitted the yardmaster at Simpson Yards, Florida to communicate by telephone with the train dispatcher at Macon, Georgia and transmit the following communication, an OS of Train No. 153 as follows: "No. 153 arrived 1:10 A. M., off 1:15 A. M., in with 80 loads, 48 emptys, 6566 tons, delivered one produce at 1:45 A. M., no universals, 15 FEC's at 3:45 A. M., and 39 SAL's at 4:00 A. M." Hereinafter referred to as Violation No. 6 in claim letter.

7. Carrier violated the Telegraphers' Agreement when on Monday, May 27, 1963 at 2:26 A. M., it required or permitted the yardmaster at Simpson Yards, Florida to communicate by telephone with the train dispatcher at Macon, Georgia, and transmit the following communications, an OS of Train No. 153 as follows: "No. 153 arrived 1:25 A. M., off 1:35 A. M., in with 57 loads, 46 emptys, 3758 tons, one produce delivered at 2:15 A. M., 12 FEC's at 2:45 A. M., and 16 SAL's at 3:00 A. M." Hereinafter referred to as Violation No. 7 in claim letter.

8. Carrier violated the Telegraphers' Agreement when on Sunday, June 2, 1963 at 3:18 A. M., it required or permitted the yardmaster at Simpson Yard, Florida to communicate by telephone with the train dispatcher at Macon, Georgia, and transmit the following communication, an OS of Train No. 153 as follows: "No. 153 arrived 12:10 A. M., off 12:20 A. M., in with 61 loads, 14 emptys, 3550 tons, one produce delivered at 1:30 A. M., no universals, 13 FEC's at 3:00 A. M., and 15 SAL's at 3:30 A. M." Hereinafter referred to as Violation No. 8 in claim letter.

9. Carrier violated the Telegraphers' Agreement when on Tuesday, June 4, 1963 at 5:43 A. M., it required or permitted Road Foreman of Engines W. C. Ramsey at Simpson Yards, Florida to communicate with the train dispatcher at Macon, Georgia and transmit the following communication, an OS report of Train No. 59 as follows: "No. 59 arrived 5:40 A. M., should be off by 5:50 A. M. Dispatcher then instructed Mr. Ramsey that they would give No. 59's crew 8 hours off before coming back to Valdosta on No. 64." Hereinafter referred to as Violation No. 9 in claim letter.

10. Carrier violated the Telegraphers' Agreement when on Friday, June 7, 1963 at 1:35 A. M., it required or permitted Yard Clerk Tillman at Simpson Yard, Florida to communicate by telephone with

the train dispatcher at Macon, Georgia and transmit the following communication, an OS report of Train No. 153 as follows: "No. 153 arrived 1:15 A. M., off 1:20 A. M., in with 84 loads, 7 emptys, 5326 tons." Hereinafter referred to as Violation No. 10 in claim letter.

11. Carrier violated the Telegraphers' Agreement when on Saturday, June 9, 1963 at 5:57 A. M., it required or permitted Road Foreman of Engines F. T. Copeland to communicate by telephone with the train dispatcher at Macon, Georgia, and transmit the following communication, an OS of Train No. 59 as follows: "No. 59 was by yard limit board at 5:40 A. M., and off at 5:50 A. M. Dispatcher then told Mr. Copeland that they would figure on running No. 64 back after 3 hours off duty." Hereinafter referred to as Violation No. 11 in claim letter.

12. Carrier violated the Telegraphers' Agreement when on Saturday, June 9, 1963 at 5:13 A. M., it required or permitted the yardmaster at Simpson Yard, Fla. to communicate by telephone with the train dispatcher at Macon, Ga. and transmit the following communication, an OS of Train No. 153 as follows: "No. 153 arrived 1:15 A. M., off 1:20 A. M., in with 53 loads, 26 emptys, 3507 tons, no produce no universals 14 FEC's at 4:30 A. M., 13 SAL's at 5:00 A. M." Hereinafter referred to as Violation No. 12 in claim letter.

13. Carrier violated the Telegraphers' Agreement when on Sunday, June 10, 1963 at 3:27 A. M., it required or permitted the yardmaster at Simpson Yards, Florida to communicate by telephone with the train dispatcher at Macon, Georgia and transmit the following communications, an OS of Train No. 153 as follows: "No. 153 arrived 2:45 A. M., off 2:55 A. M., in with 69 loads, 3 emptys, 3593 tons delivered one produce at 3:25 A. M., no universals, 10 FEC's at 5:00 A. M., 30 SAL's at 5:30 A. M." Hereinafter referred to as Violation No. 13 in claim letter.

14. Carrier violated the Telegraphers' Agreement when on Tuesday, June 11, 1963 at 12:52 A. M., it required or permitted the yardmaster at Simpson Yard, Florida to communicate by telephone with the train dispatcher at Macon, Georgia and transmit the following communication, an OS of Train No. 153 as follows: "No. 153 arrived 11:00 P. M., off 11:05 P. M., in with 34 loads, 15 emptys, 1914 tons, delivered two produce at 1:30 A. M., no universals, 4 FEC's at 11:30 P. M., and 9 SAL's at 11:55 P. M." Hereinafter referred to as Violation No. 14 in claim letter.

15. Carrier violated the Telegraphers' Agreement when on Tuesday, June 12, 1963 at 3:53 A. M., it required or permitted Yard Clerk Tillman at Simpson Yard, Florida to communicate by telephone with the train dispatcher at Macon, Georgia and transmit the following communication, an OS of Train No. 153 as follows: "No. 153 arrived 1:45 A. M., off 1:55 A. M., in with 102 loads, 6 emptys, 6457 tons, delivered two produce at 2:30 A. M., no universals, 16 FEC's at 5:00 A. M., 34 SAL's at 5:30 A. M." Hereinafter referred to as Violation No. 15 in claim letter.

16. Carrier violated the Telegraphers' Agreement when on Thursday, June 14, 1963 at 3:05 A. M., it required or permitted Yard Clerk

Tillman at Simpson Yard, Florida to communicate by telephone with the train dispatcher at Macon, Georgia and transmit the following communication, an OS of Train No. 153 as follows: "No. 153 arrived 1:10 A.M., off 1:20 A.M., in with 107 loads, 25 emptys, 7524 tons, 3 produce placed at 2:00 A.M., no universals, 17 FEC's at 4:00 A.M." Hereinafter referred to as Claim No. 16 in claim letter.

17. Carrier violated the Telegraphers' Agreement when on Monday, June 17, 1968 at 2:38 A.M., it required or permitted the yard clerk at Simpson Yard, Florida to communicate by telephone with the train dispatcher at Macon, Georgia and transmit the following communications, an OS of Train No. 153 as follows: "No. 153 arrived 2:05 A.M., in with 73 loads, 4 emptys, 3798 tons, delivered two produce at 2:45 A.M., no universals, 17 loads and 2 empties delivered FEC at 4:30 A.M. and 33 loads 1 empty delivered SAL at 5:00 A.M." Hereinafter referred to as Violation No. 17 in claim letter.

For violation No. 1 as herein stated, the Carrier shall compensate Claimant J. P. Renfroe, clerk-telegrapher, Simpson Yard, Florida by paying him one call of two hours and forty minutes at time and one-half rate of pay of \$3.99 per hour.

For Violation No. 2 as herein referred to, the Carrier shall compensate Claimant J. P. Renfrow, clerk-telegrapher, Simpson Yard, Florida, by paying him one call of two hours and forty minutes at time and one-half rate of pay of \$3.99 per hour.

For Violation No. 3 as herein referred to, the Carrier shall compensate Claimant R. L. Pickle, clerk-telegrapher, Simpson Yard, Florida, by paying him one call of two hours and forty minutes at time and one-half rate of pay of \$3.99 per hour.

For Violation No. 4 as herein referred to, the Carrier shall compensate Claimant J. P. Renfrow, clerk-telegrapher, Simpson Yard, Florida, by paying him one call of two hours and forty minutes at time and one-half rate of pay of \$3.99 per hour.

For Violation No. 5 as herein referred to, the Carrier shall compensate Claimant J. P. Renfrow, clerk-telegrapher, Simpson Yard, Florida, by paying him one call of two hours and forty minutes at time and one-half rate of pay of \$3.99 per hour.

For Violation No. 6 as herein referred to, the Carrier shall compensate Claimant J. P. Renfrow, clerk-telegrapher, Simpson Yard, Florida, by paying him one call of two hours and forty minutes at time and one-half rate of pay of \$3.99 per hour.

For Violation No. 7 as herein referred to, the Carrier shall compensate Claimant R. L. Pickle, clerk-telegrapher, Simpson Yard, Florida by paying him one call of two hours and forty minutes at time and one-half rate of pay of \$3.99 per hour.

For Violations Nos. 8, 10, 11, 12, 15 and 16 as herein referred to, the Carrier shall compensate Claimant J. P. Renfrow, clerk-telegrapher, Simpson Yard, Florida, by paying him one call of two hours and forty minutes at time and one-half rate of each violation.

For Violations Nos. 9, 13, 14 and 17, as herein referred to, the Carrier shall compensate Claimant R. L. Pickle, relief clerk-telegrapher, Simpson Yard, Florida, by paying him one call of two hours and forty minutes at time and one-half rate of pay of \$3.99 per hour for each of these violations.

EMPLOYES' STATEMENT OF FACTS: TCU Exhibit 1, attached hereto, gives in elaborate detail the undisputed facts concerning the violations that occurred at Simpson Yard, Florida, when a yardmaster OS'ed or reported trains at various times when the claimant who was either the clerk-telegrapher at Simpson Yard or the relief operator working the clerk-telegrapher position on the rest days was not called to perform the work. Claim was made in each instance for a call payment and appealed to the highest officer who declined the claims. The claims are now properly before your Board for final adjudication.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: The main line of the Georgia Southern and Florida Railway (GS&F) extends from Macon, Ga., 262 miles south to Jacksonville, Fla. The location involved in this dispute, Simpson Yard, is at Jacksonville. Macon is the division headquarters point.

During the period involved in this dispute, May 18 to June 17, 1963, J. P. Renfrow was the regularly assigned clerk-telegrapher at Simpson Yard, with assigned hours of 8:00 A. M. to 5:00 P. M. Wednesday through Sunday, and rest days of Monday and Tuesday when R. L. Pickle worked in relief.

The routine telephone conversations as reported in petitioner's statement of claim may have and probably did transpire substantially in that language, in connection with and as part of the participants' regular duties and responsibilities. However, the "yardmaster" referred to was actually a General Yardmaster, a company officer. Of course, no verbatim record or transcription of any of the conversations was made by any of the participants.

All of the conversations were in accordance with the established practice of many years' standing at Simpson Yard, as well as every other terminal on Southern Railway.

By letter dated June 20, 1963, the ORT District Chairman on the GS&F presented the instant claim to the Division Superintendent, alleging that "communication work relating to movements of trains" had been performed by employees not covered by the Telegraphers' Agreement in violation of Rules 1, 10 and 18. The claim, being based on contentions contrary to the established practice of many years' standing, was declined by the Superintendent in his letter of July 23, wherein he advised the ORT District Chairman that there was no "OS" information or train order work involved in any of the 17 instances.

The ORT General Chairman appealed the claim to carrier's General Manager, who declined it by letter dated November 1, 1963, reading as follows:

"Referring to your letter of September 10, file R-8/754, appealing claims filed in behalf of J. P. Renfrow, Clerk-Telegrapher, Simpson

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: The immediate circumstances from which these claims arose are not in dispute. At Simpson Yard, Jacksonville, Florida, employes and officers not covered by the Telegraphers' Agreement used the telephone to communicate with the train dispatcher concerning arrival time, time of crews going off duty, and other information related to arrival of trains at the Yard, at time when the one telegrapher assigned to Simpson Yard each day was not on duty.

Employes contend that this is a type of work customarily performed by telegraphers, and that its performance by others constitutes violation of the Agreement.

Carrier contends that the incidents were routine telephone conversations in connection with the participants' regular duties and responsibilities, and were carried out in accordance with an established practice of many years' standing.

This Board has considered many disputes between these same parties concerning the application of the Agreement to communication work. In Award 12706 the subject was exhaustively explored.

In the present case, as in a number of previous ones, the parties are in conflict on the basic question in dispute, and neither has presented evidence of probative value in support of its assertions concerning past practice.

The Board has no means of resolving such conflicts, therefore, the claims must be dismissed. See Awards 12708, 12710 (Claim No. 1), 12711.

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 there is no evidence that the Agreement has been violated.

AWARD

Claims dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1968.

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