



Award No. 16861  
Docket No. TE-15784

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**(Supplemental)**

Gene T. Ritter, Referee

**PARTIES TO DISPUTE:**

**TRANSPORTATION-COMMUNICATION EMPLOYEES UNION**

**THE PENNSYLVANIA RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of the Transportation-Communication Employees Union on the Pennsylvania that Carrier allowed or permitted the Yard Clerk at Bicknell to give the Vincennes car report April 18, 1962 at 9:25 A. M., an employe not covered by the Telegraphers' Agreement, but work accruing to the Telegraphers by custom and practice Carrier shall compensate the senior relief Agent or the senior Sub Agent the difference in a day's pay.

**EMPLOYEES' STATEMENT OF FACTS:** The current Agreement between the parties has been effective since September 1, 1949. The Scope thereof provides:

**"SCOPE**

The provisions set forth in this Agreement shall constitute separate Agreements between The Pennsylvania Railroad Company and its employes, and the Baltimore and Eastern Railroad Company and its employes, of the classification set forth below, represented by the Transportation-Communication Employees Union, and shall govern the hours of service, working conditions and rates of pay of the respective positions and employes classified herein.

**The Pennsylvania  
Railroad Company**

Station Agents and Assistant  
Agents Classified herein;

Managers and Assistant Managers,  
Wire Chiefs and Assistant Wire  
Chiefs, Chief Train Directors,  
Train Directors and Assistants,  
Telegraphers, Telephone  
Operators (Except Telephone  
Switchboard Operators), Block  
Operators, Operator-Clerks,  
Levermen, Printer-Operators."

**Baltimore & Eastern  
Railroad Company**

Station Agents and Assistant  
Agents Classified herein.

Thus, so far as the Carrier is able to anticipate the basis of the Employees' claim, the questions to be decided by your Board or by the National Disputes Committee established by Memorandum of Agreement, dated May 31, 1963, are whether the claim progressed to the National Railroad Adjustment Board on behalf of an unnamed Claimant is a proper claim under the provision of Article V, paragraph 1 (a) of the August 21, 1954 Agreement; whether the performance of the work here involved by a clerk violated the Scope Rule of the applicable Schedule Agreement; and whether any individual is entitled to the compensation claimed.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Carrier first contends that this claim is barred because it was filed on behalf of an unnamed Claimant, contrary to Article V. This contention is not well taken for the reason a claimant (R. N. Buttorff) was named at the regional level on the property as appears on page 9 of the record. Also, on page 18 of the record, Carrier argues that Claimant was on duty elsewhere and not available; thus acknowledging that the Claimant was known and had been ascertained. Therefore, this issue will be considered on its merits.

It is apparent from the record that all parties to this issue had agreed that a Clerk stationed at the Bicknell Station could receive the Vincennes Agent's car report and relay the same to the Car Distributor at Indianapolis. In this instance, however, the report from Vincennes was received by a Clerk at Bicknell Scales, approximately 1.9 miles from Bicknell Station. Therefore, the question involved in this dispute is whether or not the Agreement was violated because the message was received and relayed at Bicknell Scales instead of Bicknell Agency. This Board finds that there was no violation of the Agreement proven.

The Organization has the burden of proving a prima facie violation of a specific provision of the Agreement. The fact that a car report was received and relayed from Bicknell Scales instead of Bicknell Agency does not constitute a violation of the existing Agreement. The Organization has wholly failed to sustain its burden of proof establishing that the handling of car reports is, by practice, custom, and tradition, reserved to telegraphers.

Awards 6409, 11805 and 13288 support a denial award in this instance. Accordingly, the claim will 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 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 23rd day of January 1969.**