

Award No. 16944
Docket No. TE-15523

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

SOO LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Soo Line Railroad, that:

1. Carrier violated the Agreement between the parties when on January 7, February 4, 20, March 10, 15, April 21, 22, July 28, September 9, 10, 11, 16, 1964, it required or permitted employes not covered by said Agreement at Nestoria, Michigan, to transmit reports of movement of trains at a time when the operator was off duty.

2. Carrier shall compensate H. E. Beck, operator, Nestoria, Michigan, in the amount of a minimum call payment on each date mentioned above.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement by and between the parties to this dispute, effective September 1, 1942, as amended and supplemented, which is available to your Board and by this reference is made a part hereof.

At page 10 of said Agreement is listed the following position existing at Nestoria, Michigan on the effective date of the Agreement:

"HOUGHTON DIVISION

Location	Title	Rate per Hour
Nestoria.....	076"

Briefly, the facts involved in this dispute are: On the dates involved, train service employes at Nestoria performed Operators' work at a time when Claimant was off duty, but available for call service.

As the Wage Scale listing indicates, the Carrier maintains telegraph service at Nestoria for the purpose of handling communications arising at or destined to this station.

OPINION OF BOARD: The Claim charges that on a series of specified occasions employes other than those covered by the Agreement "transmitted reports of the movement of trains" in violation of the Agreement. Carrier defended in part by citing a portion of the Agreement which, it claims, permitted the involved communications:

"(3) When no emergency exists, as above defined, an inquiry by train or enginemen as to the time or location of another train or in connection with their work, will not be considered a violation of this agreement when it does not involve the transmission of train orders, messages of record, reports or OS of trains."

Organization argues and Carrier denies that the involved messages were reports or OS's of trains. The burden of proving that the messages were not among those permissible by others than Telegraphers is the Organization's, and it failed to do this.

The evidence in this record does not show that the involved communications were, in fact, "reports or OS's of trains"; the assertion in the claims as originally filed that the messages were "OS's" is not enough to establish the fact.

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.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of February, 1969.