



Award Number 17585

Docket Number TE-16930

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

**SOUTHERN PACIFIC COMPANY—TEXAS AND
LOUISIANA LINES**

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Southern Pacific Company (Texas and Louisiana Lines), that:

CLAIM I

1. Carrier violated the Agreement between the parties when it permitted or required trainmen to handle train orders at Butler, Texas, on October 14, 20, 29, 31 and November 19 and 20, 1965.
2. Carrier shall compensate N. R. Radtke for a minimum call payment for each date.

CLAIM II

1. Carrier violated the Agreement between the parties when it permitted or required trainmen to handle train orders at Butler, Texas, on December 8, 14 and 17, 1965.
2. Carrier shall compensate N. R. Radtke for a minimum call payment for each date.

CLAIM III

1. Carrier violated the Agreement between the parties when it permitted or required trainmen to handle train orders at Butler, Texas, on January 16, 21 and 29, 1966.
2. Carrier shall compensate N. R. Radtke for a minimum call payment for each date.
3. Carrier shall compensate N. R. Radtke, or his successor, for a minimum call payment for any other date, beginning with sixty days in advance of February 10, 1966, and continuing until such violations cease to occur, when trainmen are permitted or required to handle train orders at Butler, Texas.

EMPLOYEES' STATEMENT OF FACTS: Copy of the Agreement between the parties, effective December 1, 1946, as supplemented and amended, is available to your Board and by this reference is made a part hereof.

The three claims in this dispute appealed to the Board have been combined for the reason they offer similar or identical facts and issues.

Station force consists of Agent-telegrapher, only. Principal industry consists of three brick manufacturing plants. There are two more brick manufacturing plants located at Butler. Butler is a location on this branch line some 6.6 miles from Elgin. No agency has ever existed at Butler. It is a non-agency station. Business originating at Butler is handled by the Elgin Agency. In the process of handling this business from the non-telegraph station, the agent-telegrapher at Elgin goes to Butler on occasion.

N. R. Radtke, assigned as agent-telegrapher at Elgin presented claim for payment of a call on each date, October 14, 19, 20, 29, and 31, November 19 and 20, December 8, 14 and 17, 1965, and January 16, 21, and 29, 1966, because on each of these dates a conductor of a freight train copied a train order at Butler. The claims were declined and were appealed to Carrier's Manager of Personnel by the General Chairman of the Transportation-Communication Employees Union. They were declined because they were devoid of merit under the current Agreement. Conference failed to bring about settlement of the claims on the property. Correspondence with the General Chairman is reproduced as CARRIER'S EXHIBIT NO. 1, EXHIBIT NO. 2 and EXHIBIT NO. 3.

(Exhibits Not Reproduced)

OPINION OF BOARD: Claimant was duly assigned Agent-Telegrapher at Elgin, Texas, an open station with a station force of Agent-Telegrapher, only. Approximately seven miles from Elgin on this same Branch is located a non-agency station known as Butler station. Claimant makes periodic trips to Butler for the purpose of handling Carrier's business. On the dates in question, a conductor of a freight train copied train orders at Butler. The Organization contends that Carrier violated Rule 17 of the Agreement as interpreted by Award 13499 (Dorsey). Carrier contends that copying of train orders at locations where no telegraphers are employed is not the exclusive right of telegraphers on this property. The contention of Carrier is well taken.

This Board finds that was scope rule involved in this dispute is general in nature, and that, therefore, Claimant has the burden of proof by a preponderance of competent evidence that employees at the Butler station have by custom, practice and tradition on a system wide basis, performed this work to the exclusion of all others. Award 16502 (Zack), 16595 (McGovern), 17230 (Dugan), 17006 (Zumas), 17036 (Franden) and 16993 by this referee.

This dispute is distinguished from the dispute in Award 13499 (Dorsey) for the reason that in Award 13499, it was shown by Claimant that an operator was employed at the station in question. In the instant case, there is no showing that an operator was employed at Butler. The facts reveal that the Claimant in this case was employed to take care of numerous categories of Carrier's business at Butler, and was acting in the capacity of agent, but was not employed at Butler as an "operator".

Having failed to sustain Claimant's burden of proof, this claim will be denied.

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 Employee involved in this dispute are respectively Carrier and Employee 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.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of November 1969.