

Award No. 18539
Docket No. TE-18964

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert M. O'Brien, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION DIVISION, BRAC
CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Central of Georgia Railroad, 5756, that:

1. Carrier violated and continues to violate the Agreement between the parties when commencing on January 1, 1969, and continuing thereafter, it required or permitted employes of another railroad, not covered by the Agreement, to handle, receive, copy and deliver train orders governing the movement of trains over the Central of Georgia Railway.
2. Carrier shall be required to compensate Agent-Operator W. E. Smith, regularly assigned at Milledgeville, Georgia, a two (2) hour call for each day, Monday through Saturday, and a three (3) hour call on each Sunday that this violation has occurred commencing January 1, 1969, and continuing thereafter on a day-to-day basis until this violation is corrected.
3. Carrier shall be required to permit a joint check of its records, including examination of train sheets and train order books of train dispatcher at Macon, Georgia, where trains are dispatched on this territory, to determine the exact number of violations.

CARRIER DOCKET: TE-31361-C

EMPLOYES' STATEMENT OF FACTS:

(a) STATEMENT OF THE CASE

The Agreement between the parties, effective October 31, 1959, as amended and supplemented, is on file with your Board and by this reference is made a part hereof.

Claim was timely presented, progressed, including conference with the highest officer designated by Carrier to receive appeals, and remained declined. The Employes, therefore, appeal to your Honorable Board for adjudication.

OPINION OF BOARD: Carrier is the former Central of Georgia Railway, now a part of the Southern Railway System. Carrier is a separate and distinct railroad from the Georgia Railroad. The Georgia Railroad secured the right to use Carrier's tracks from Milledgeville to Harllee, Georgia in order to deliver coal at Harllee. The Georgia Railroad, it is important to note, did not secure control of Carrier's tracks and facilities. It merely obtained trackage rights while using its own power and crews. The Georgia Railroad began operating its trains over Carrier's tracks March 19, 1968.

Both Carriers employ agent-telegraphers at Milledgeville, although they are covered by separate agreements, located in separate facilities, and are not joint employees. Claimant is the regularly assigned telegrapher of Carrier at Milledgeville. This claim arose out of the fact that instead of allowing Claimant to handle the train orders at Milledgeville authorizing movement of the Georgia Railroad trains between Milledgeville and Harllee, the train orders were transmitted to the Georgia Railroad telegraphers at Milledgeville, who delivered the train orders to the Georgia Railroad train crews who are to execute them. The train orders are copied, received, and delivered by the Georgia Railroad telegraphers at Milledgeville authorizing Georgia Railroad train crews to operate as Carrier's trains between Milledgeville and Harllee.

It is Petitioner's contention that the work of handling the train orders in question at Milledgeville belongs exclusively to employees covered by its Agreement with Carrier, and Carrier violated the Scope Rule and Rule 18(e-1) of that Agreement by delegating this work to employees of the Georgia Railroad.

At the outset, Carrier raises a procedural defect, setting forth that the claim was not timely filed within 60 days from the date of occurrence of the claim, i.e., March 19, 1968, when the practice in question was inaugurated, and thus it is barred by the application of Rule 1 (a). In support of its contention, Carrier advances several awards. However, nearly all the awards cited by Carrier involved a single event—the abolishment of an employee's position—and this Division held that the violation was not a continuous one, but occurred the day the position was abolished, and therefore barred by its 60 day limitation. Those awards are clearly distinguishable on the facts. In the case at bar there is no single event which can be classified as the "date of the occurrence on which the claim or grievance is based." The practice in question is clearly a continuing one, coming within the purview of Section 3 of Rule 20, and not barred by the 60 day limitation. However, the 60 day retroactivity concerning monetary claims must be complied with. We shall decide the claim on the merits.

We are compelled to the conclusion that the handling of train orders for movement of trains over Carrier's tracks is exclusively reserved to telegraphers covered by the Agreement with Carrier. Rule 18 (e-1), clear and unambiguous in language, compels such a result. Rule 18 (e-1) prohibits anyone, other than train dispatchers, from performing telegraphic work in connection with the movement of trains, unless he is covered by the Agreement negotiated by the Telegraphers and the Carrier. The sole exception is in cases of bona fide emergencies, which is not the situation in the present claim.

The employees at Milledgeville who handled the train orders were not train dispatchers, they were telegraphers. Nor were they covered by the applicable

Agreement. They were foreign to the collective bargaining Agreement. Carrier unilaterally delegated its telegraphic work at Milledgeville to them in direct violation of Rule 18 (e-1). Although Award 13956 involved different parties, we concur in the reasoning there and find it pertinent to the claim at hand.

It makes no difference that the train orders were given to Georgia Railroad telegraphers on Georgia Railroad property to be delivered to Georgia Railroad crews. The crucial fact is that the Georgia Railroad is exercising trackage rights on Carrier's tracks and consequently the operative Agreement between Carrier and its telegraphers applies. This Agreement has been violated. Claim sustained.

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 Carrier violated the Agreement.

AWARD

Claim sustained limited to a 60 day retroactive period from the date the claim was first filed on the property.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1971.