

Award No. 19184
Docket No. TE-15443

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Clement P. Cull, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES**

(Formerly The Order of Railroad Telegraphers)

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Pacific (Pacific Lines), that:

1. Carrier violated and continues to violate the Agreement between the parties when it requires or permits employes not covered by said Agreement to receive messages (loading report) in the office of the District Freight and Passenger Agent at Tucson, Arizona.

2. (a) Carrier shall compensate G. V. Fimbres, regularly assigned relief Wire Chief-PMO-Telegrapher-Clerk in the amount of a call payment, two hours at the time and one-half rate, on January 9, 1963.

(b) On each subsequent date this violation occurs, compensate the senior regular assigned employe at the point of violation idle on rest day in the amount of a call payment.

EMPLOYEES' STATEMENT OF FACTS: The Agreement between the parties effective December 1, 1944, as amended and supplemented, is available to your Board, and by this reference is made a part hereof.

On January 9, 1963, at 8:53 A.M., Clerk H.A.M., in Mr. Jones's Office, Tucson, Arizona, received the following communication of record by telephone direct from Agent-Telegrapher Burgess at Curtiss, Arizona:

"Curtiss, Arizona 8:53 A.M. January 9th, 1963
HAM, W. T. Jones Office, Tucson, Arizona
Loading report week January 1-7.

Carbo Bisbee 2 Santa Rita 1 AJO 1 Powder Bisbee 1 Acid El
Paso 2 Amonia Albuquerque 1 Hereford Texas 10 route Deming
ATSF.

(Signed) Agent Burgess"

4. By letter dated February 6, 1963 (Carrier's Exhibit "A"), Petitioner's District Chairman presented a claim to Carrier's Division Superintendent in behalf of Telegrapher G. V. Fimbres, hereinafter referred to as claimant, for one (1) "special call" January 9, 1963, and on each date and each instance subsequent to January 9, 1963, when similar work performed at location involved claim in behalf of the senior regular assigned employee at the point of violation observing a rest day for one "special call." By letter dated March 14, 1963 (Carrier's Exhibit "B"), the Carrier's Division Superintendent denied the claim. By letter dated March 16, 1963 (Carrier's Exhibit "C"), Petitioner's Local Chairman reiterated his position and that he intended to appeal this claim.

5. By letter dated April 12, 1963 (Carrier's Exhibit "D"), Petitioner's General Chairman appealed the claim to Carrier's Assistant Manager of Personnel, and by letter dated March 23, 1964 (Carrier's Exhibit "E"), the latter denied the claim, stating in effect that there is no provision of the current agreement which allocates work here in dispute to the exclusive performance by a telegrapher, on the contrary, such work has been performed by clerical employees and others as in this case, throughout the life of the current agreement and for many years prior thereto.

(Exhibits not reproduced.)

OPINION OF BOARD: On January 9, 1963, the Agent-Telegrapher at Curtiss, Arizona, telephoned a clerk in the office of Carrier's District Freight and Passenger Agent at Tucson, Arizona, transmitting information concerning cars loaded at Curtiss during the week of January 1 to 7, 1963.

Employee filed claim in favor of a regularly assigned telegrapher in the telegraph office at Tucson, contending that this Claimant rather than the clerk in the Traffic office should have been used to receive the communication.

The Employee further contend that the communication involved, a copy of which appears in their statement of facts, is similar to those which numerous awards of this Board and a Special Board of Adjustment have held constitutes work reserved to telegraphers.

Carrier offers several defenses against the claim, one of which is to the effect that the telephone conversation became necessary only because the Agent-Telegrapher at Curtiss failed to comply with long established instructions to furnish the Traffic office copies of freight bills and waybills issued by his agency.

The record supports this contention of the Carrier. If the Agent-Telegrapher at Curtiss had furnished the Traffic office copies of the waybills covering cars loaded at his station during the preceding week the telephone conversation would not have been necessary.

We must conclude, therefore, without discussing the doctrine of equitable estoppel or deciding whether the communication involved might have been, under other circumstances, reserved to telegraphers, that this claim should be denied. Since this conclusion disposes of the claim, other contentions by the Carrier need not be considered or ruled upon.

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: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of May 1972.