

Award No. 1168
Docket No. TE-1065

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY
COMPANY**

STATEMENT OF CLAIM: "Claim of the General Committee of The Order of Railroad Telegraphers, Atchison, Topeka and Santa Fe Railway, that Telegrapher J. C. Kelly, Mobest, Arizona, be paid 46 disallowed calls claimed by him under Articles 3-(c) and 13 of the Telegraphers' Agreement because train orders were handled at Mobest on the dates covered by the calls and in a manner violative of Article 13 of said agreement."

EMPLOYES' STATEMENT OF FACTS: "An agreement bearing effective dates of February 5, 1924 as to rules and August 1, 1937 as to rates of pay is in effect between the parties.

"Mobest is located outside the city of Phoenix and approximately two miles to the North. All freight trains originate and terminate at Mobest.

"On April 29, 1938, and immediately prior thereto, Mobest employed two telegraphers, assigned hours 9:00 A. M. to 5:00 P. M., and 7:00 P. M. to 3:00 A. M. providing sixteen hours telegraph and train order service. Effective April 30, 1938, as a result of a force reduction, Mobest employed one telegrapher, assigned hours 6:00 P. M. to 3:00 A. M. (one hour for meal) providing eight hours telegraph and train order service. 'PO' office, Phoenix employes two telegraphers, assigned hours 7:00 A. M. to 3:00 P. M. and 3:00 P. M. to 11:00 P. M. on week days, and 7:30 A. M. to 9:30 A. M. and 3:00 P. M. to 6:45 P. M. on Sundays and holidays, providing sixteen hours telegraph and train order service on week days. During the period May 4, 1938, to July 6, 1938, both inclusive, forty-six (46) train orders were transmitted to telegraphers at Phoenix on forty-six different occasions (outside the assigned hours of the telegrapher at Mobest) addressed to train crews at Mobest, and delivered that location by agent at Phoenix, who is not covered by the Telegraphers' Schedule."

CARRIER'S STATEMENT OF FACTS: "An agreement bearing effective dates of February 5, 1924, as to rules and August 1, 1937, as to rates of pay is in effect between the parties.

"Mobest is located outside the city of Phoenix and approximately two miles to the North. All freight trains originate and terminate at Mobest.

"On April 29, 1938, and immediately prior thereto, Mobest employed two telegraphers, assigned hours 9:00 A. M. to 5:00 P. M., and 7:00 P. M. to 3:00 A. M., providing sixteen hours telegraph and train order service. Effective April 30, 1938, as a result of a force reduction, Mobest employed one telegrapher, assigned hours 6:00 P. M. to 3:00 A. M. (one hour meal

therein means and has been interpreted by both parties to mean, the transmission of train orders by telephone or telegraph or the copying of train orders, and it having further shown that the transmission of train orders at Phoenix and the copying of train orders was performed by 'no employe other than covered by this (Telegraphers') Schedule,' the Board must enter an award denying the claim of the employes."

OPINION OF BOARD: The claim and the record made by the parties in relation thereto, as well as their respective contentions, appear above. Briefly, it appears that telegrapher J. C. Kelly, the only such employe at Mobest, Arizona, during the period of the claim presented, was available for "calls" in the matter of train orders for crews in charge of trains departing Mobest outside his assigned hours, and in his behalf it is urged that pursuant to rule 13 of the agreement he should have been called in all such instances. Instead, as is not questioned, orders for the trains thus departing were transmitted to telegraphers at Phoenix, Arizona, addressed to train crews at Mobest, of which there was delivery through agencies other than the telegrapher at Mobest. Rule 13, which we quote, reads: "No employe other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed or can be promptly located, except in an emergency, in which case the telegrapher will be paid for the call."

We think that in principle the record here parallels the records in awards No. 86, No. 709, No. 1096, and currently, No. 1166, TE-1061 and No. 1167, TE-1062, and that the doctrine declared in those awards is in consonance with the purposes and spirit of the agreement. We should not make departure.

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 employe involved in this dispute are respectively carrier and employe 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.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 30th day of July, 1940.

DISSENT TO AWARD No. 1168, DOCKET No. TE-1065

The Award in this case finds in its Opinion of Board that in principle the record here parallels the records in certain former awards, including currently rendered by the same author Award No. 1166, Docket No. TE-1061 and Award No. 1167, Docket No. TE-1062, the doctrine of which is followed in sustaining the instant claim.

Similarly, too, that which has been said in dissents respectively to Awards No. 1166, Docket No. TE-1061 and No. 1167, Docket No. TE-1062, is applicable to the Opinion in the Award in the instant case, and reference thereto made for that purpose.

R. F. RAY
C. P. DUGAN
R. H. ALLISON
A. H. JONES
C. C. COOK