

Award No. 5644
Docket No. TE-5643

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
MISSOURI PACIFIC LINES IN TEXAS AND LOUISIANA

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Lines in Texas and Louisiana, that:

(a) The Carrier is violating the scope rule of the Telegraphers' Agreement by permitting or requiring the Car Distributor at Kingsville, Texas, an employe not under the Telegraphers' Agreement, to regularly transmit and receive messages and reports of record by telephone; and

(b) That the performance of such work at Kingsville shall be assigned to and performed only by employes under the Telegraphers' Agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing date October 15, 1940, as to rates of pay, rules and working conditions, is in effect between the parties to this dispute.

On the Kingsville Division, at Kingsville, Texas, the Carrier maintains a position designated as Car Distributor. The employe filling the position is not covered by the Telegraphers' Agreement, however, he is required or permitted to perform work which comes within the Scope of this Agreement.

The duties of the position require the incumbent employe to keep a record of all cars which are loaded and unloaded on the Division. He makes proper distribution of the cars and fills orders from the agents located at the various stations. In addition to this work, the employe handles telegraphic communication service which is work properly coming within the classification and scope of the Telegraphers' Agreement. Such communication service involves the transmission and reception of reports of record and messages by the use of the telephone.

The office occupied by the Car Distributor is adjacent, with a connecting door, to the relay telegraph office where employes covered by the Telegraphers' Agreement handle communication service by the use of telephone, printing telegraph (teletype) and Morse telegraph.

in the existing agreement, such as sustaining the claim would involve. We therefore hold that there has been no violation of the Agreement, and the claim is denied.'"

In the light of all the facts and circumstances surrounding this case, together with the Findings' of your Board in previous similar situations, it is clearly evident that the contention and claim of the Employees in the case under consideration is without justification, merit or basis and should therefore, be denied.

All matters contained in this submission have been the subject of discussion in conference and/or correspondence between the parties.

(Exhibits are reproduced).

OPINION OF BOARD: The Order of Railroad Telegraphers claims that the Carrier is violating the scope rule of their Agreement by permitting or requiring an employe not covered by the Agreement to transmit and receive messages and reports of record by telephone at Kingsville, Texas. No claim for money payment is made.

The record shows that the Carrier has entered into another collective bargaining Agreement with the Brotherhood of Railway and Steamship Clerks and has assigned the work at Kingsville to employes under that Agreement who have been performing it for the past 25 years. The Brotherhood of Railway and Steamship Clerks has not been served with notice pursuant to Section 3 (j) of the Railway Labor Act.

Substantially the same situation complained about here seems to exist at De Quincy, Louisiana. And until 1943 at Palestine substantially the same work was not specifically assigned to either Clerks or Telegraphers. In 1942 the Brotherhood of Railway and Steamship Clerks filed a claim with this Board (Docket No. CL-1864) contending that the position at Palestine should be assigned to Clerks like the positions at Kingsville and De Quincy. It does not appear that the Order of Railway Telegraphers was served with notice pursuant to Section 3 (j) of the Railway Labor Act in Docket No. CL-1864. An award was made (No. 1991) denying the Clerks' claim, whereupon the Carrier assigned the work of the position at Palestine to the Telegraphers.

There is color in a claim that the scope rules of both Agreements cover the work at Kingsville; and the Clerks' long established incumbency of the position at Kingsville present questions that were not determined by Award 1991.

As indicated by the minutes of this Board, dated July 25, 1951, the Carrier Members insisted that hearing of this case be postponed and that others interested "be advised of the date set and be afforded an opportunity to appear at such hearing to protect any interest they may have." The Labor Members would not agree to any such proposal and the hearing was held without any such notice given.

Upon the authority of Awards 5432, 5599 and 5627, the claim must be dismissed without prejudice.

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 has jurisdiction over the dispute involved herein; and

That the claim should be dismissed without prejudice for the reasons above found.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 8th day of February, 1952.

DISSENT TO AWARD 5644, DOCKET TE-5643

We dissent.

/s/ A. R. Ferris
/s/ Roger Sarchet
/s/ J. H. Sylvester
/s/ G. Orndorff
/s/ A. J. Cunningham