

**Award No. 8266**

**Docket No. TE-7088**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Whitley P. McCoy, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**SEABOARD AIR LINE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Seaboard Air Line Railroad, that:

(1) The Carrier violated and continues to violate the terms of the prevailing agreement between the parties, when commencing November 30, 1951, it unilaterally removed from the scope of the agreement and from the employees thereunder, the telegraph and/or telephone operator work at its Auburndale, Florida, station, outside the assigned hours of the agent-operator position at that point, and delegated the performance of such work to employees not under the agreement located at another point; and

(2) The Carrier shall now restore to the scope of the agreement and to the employees thereunder the above described work at the Auburndale, Florida station; and

(3) The employees under the agreement, occupying the position of agent-operator at Auburndale be compensated under the call and overtime provisions of the agreement on November 30, December 3, 12, 13, 14, 15, 17, 18, 19, 21, 22, 26, 27, 28, 29, 31, 1951, January 1, 2, 3, 4, 5, 7, 8, 9, 1952, and on any subsequent dates this violation occurs until the violation is corrected.

**EMPLOYEES' STATEMENT OF FACTS:** There is an agreement in full force and effect between the parties dated October 1, 1944, amended as to rates of pay on various dates, and amended as to rules covering working conditions in Supplements Nos. 1 through 6 on various dates.

There is listed in the current agreement only one position at Auburndale, Florida, the agent-operator. The Atlantic Coast Line Railroad also has an agency at Auburndale and a tower designated as "NU" Tower. The Seaboard Air Line Railroad crosses the Atlantic Coast Line Railroad approximately one-half mile south of the Seaboard Auburndale agency station, and it is here that "NU" Tower is located. "NU" is manned continuously by employees employed by and under the jurisdiction of the Atlantic Coast Line Railroad.

Any contract governing work and positions at the Atlantic Coast Line agency station and at "NU" Tower is entirely between that carrier and its employees. At the Seaboard agency station, all of the work in connection with

The Organization is well aware of the fact that foreign line telegraphers at joint facilities have handled train orders for the Seaboard since time immemorial and have admitted that such an arrangement is not in violation of Rule 24 or any other rule of the agreement.

(e) It is incumbent upon Petitioner to prove why it did not consider it to be a violation of the agreement in requiring Seaboard telegraphers located at the yard office at Norlina as hereinabove mentioned to perform telegraphic work in matters relating to the agency at a time outside of Agent Johnson's assigned hours, also why it was not considered a violation of the Telegraphers' Agreement when Seaboard operators located in the block office near the passenger station at Petersburg, Virginia, during World War II were required to perform the telegraphic work relating to the ticket agency at that point when as a matter of fact L. B. Williams was the ticket agent and covered by the Telegraphers' Agreement but worked in the passenger station.

Petitioner should explain the reason for having recognized the right of an ACL telegrapher to occupy the position of joint ticket agent-operator (SAL and ACL) at Weldon, North Carolina, for many years when as a matter of fact this position is shown in the wage scale of the agreement revised effective October 1, 1944. It should also explain the reason for recognizing this ACL joint telegrapher as having the right to handle train orders and telegrams for the Seaboard at the passenger station when the Seaboard agent-operator is not on duty, notwithstanding a Seaboard agent-operator, covered by the Telegraphers' Agreement has been employed in the freight station nearby for many years.

Carrier contends that the agreement has not been violated, consequently the claim must be denied.

All data submitted herein has been discussed with or is well known to Organization representatives.

(Exhibits not reproduced.)

**OPINION OF BOARD:** Both the Carrier and the Atlantic Coast Line Railroad have agency stations at Auburndale, Florida. The Carrier's line crosses that of the Atlantic Coast Line about half a mile from the Carrier's station, and at that point the Atlantic Coast Line operates an interlocking plant known as NU cabin, which was established when the Carrier's line was constructed to cross the existing Coast Line track about 1925. Under the terms of Contract No. 13540 between the two carriers, the Carrier was required to build and maintain the plant, but the Coast Line operates it with its own signalmen, operators, and other employees. The Carrier is required to reimburse the Coast Line for the cost of such salaries, but of course the employees perform the work of the plant whether it be for one carrier or the other. Since 1927 the Carrier has assigned to the joint-operators at NU the work of handling train orders, working manual block, reporting trains to the train dispatcher, etc.

But prior to November 30, 1951, work pertaining to the agency functions of the Auburndale Station had never been performed by the Coast Line employees at NU. The Agent-Operator of the Carrier had always performed the communication work arising at the station, as well as all the other functions of his position. But commencing on that date the Carrier required a clerk in the Station to carry a report of perishables to NU to be telephoned by a Coast Line operator there to the dispatcher at Jacksonville. Such reports had always theretofore been handled by the Agent-Operator. This change in practice was instituted for the purpose of eliminating the expense of calling out the Agent-Operator after hours. The transmitting of this report was of course agency work, and it had always been performed by the Agent-Operator.

The Carrier seeks to justify this action by showing that it had the right, under Contract 13540 with the Coast Line, to require those Coast Line opera-

tors to perform that work. What the Carrier's rights were with respect to the Coast Line is immaterial to the question of what its rights were under the Agreement with the Organization.

It further seeks to justify its action by asserting that under Contract 13540 the joint-operator at NU was its employe, for it could use him and had to reimburse the Coast Line for his salary. That did not make him the Carrier's employe; it merely established legal liability on the Carrier, as to third parties, for the acts done in the Carrier's behalf. But even if the joint-operator at NU had been the Carrier's employe, the Carrier would still be taking work away from one position and placing it in another—and doing it not generally but only when it would save overtime pay. Our decisions do not countenance that.

It is true, as argued by the Carrier, that no employe has a right to overtime pay. But it is also true that the employe has the right to perform the work attached to the position which he holds, regardless of whether such work may have to be paid for at one rate or another.

This case is governed by the principles established in Awards 1527, 2088, and 1302. The claim must be 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 Employes involved in this dispute are respectively Carrier and Employes 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

Items 1, 2, and 3 of the claim are sustained, and pay is awarded as claimed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon  
Executive Secretary

Dated at Chicago, Illinois, this 10th day of March, 1958.