

Award No. 10321

Docket No. TE-9156

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Colorado and Southern Railway, that:

(1) The Carrier violated the Agreement between the parties when it required or permitted employes not under the Agreement to perform work belonging to employes covered by the Telegraphers' Agreement.

(2) As a result of such violation, the Carrier be now required to pay an amount equivalent to one day's pay for each violation to the following employes on the dates next following:

T. G. Kornegay, Clayton, New Mexico, Monday, July 16, 1956

W. E. Spencer, Trinidad, Colorado, Tuesday, July 17, 1956

C. V. Conder, Des Moines, New Mexico, Thursday, July 19, 1956

B. Baker, Trinchere, Friday, July 20, 1956

C. V. Conder, Des Moines, New Mexico, Thursday, July 26, 1956

T. G. Kornegay, Clayton, New Mexico, Monday, July 23, 1956

EMPLOYEES' STATEMENT OF FACTS: The Agreements between the parties to this dispute are available to your Board and by this reference are made a part hereof.

On the following dates Section Foreman A. Kaparos, by use of telephone, transmitted the following messages:

Watervale July 16, 1956

J. J. Grier Co., Denver, Chicago, Omaha.

Camp 133 as 70 men, full, need 1 waiter at once, send to Branson, moving this P.M.

Signed, Smith 620 A. M.

from the very outset of telephone use thereon, without objection, which fact is conclusive proof of the parties' intentions, particularly where concerned with a claim which itself must rely upon tradition, custom and practice for support in the total absence of the least implication or inkling in the agreement to lend sustenance thereto.

The Carrier earnestly submits that the Petitioner can produce nothing which will support this novel character of claim and urges with deference that same be denied.

The Carrier affirmatively states that all data herein and herewith submitted has been previously made known to the Employees' representatives.

With access to the Petitioner's ex parte submission, the Carrier offers the foregoing, reserving its right, of course, to reply more thoroughly upon receipt of a copy of the Petitioner's ex parte submission.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute involves the transmission, via the telephone, of a number of messages by a section foreman on the dates shown in the Statement of Claim.

The record contains a letter dated December 16, 1953 from the Carrier to the General Chairman which reads in part:

"In our conference to-day, it was agreed that if the Section Foreman, in using the Dispatcher's telephone, would request the Dispatcher to ring some operator on duty and give that operator the message directed to the Chief Dispatcher, that would be permissible and would not involve a claim for an operator account slow order being transmitted in that manner."

There is no evidence in the record to rebut the language contained in the letter of December 16, 1953 which recognized and sanctioned the practice here made subject of dispute.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of January 1962.