

Award No. 10356

Docket No. TE-8456

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

(Supplemental)

Carl R. Schedler, Referee

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**THE NEW YORK, CHICAGO AND ST. LOUIS  
RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the New York, Chicago and St. Louis Railroad, that:

(a) Rule 1 (Scope) of the Agreement between the parties has been and is being violated at Rankin, Illinois, when the Carrier requires or permits local freight crews and/or various work train crews to give their "OS" (Train Report) arrival and tie-up time as well as to report block clear direct to the Dispatcher after the Agent's hours of duty; and

(b) The Carrier shall compensate the Agent at Rankin, Illinois, for a two hour call, as provided for by Rule 12 of the Agreement, commencing September 1, 1953, and for each day thereafter that violations have taken place; as may be developed by a joint check of the Carrier's records.

**EMPLOYES' STATEMENT OF FACTS:** The agreements between the parties to this dispute are on file with this Division of the National Railroad Adjustment Board, and by reference thereto are made a part of this submission.

This claim arises out of Carrier's refusal to pay claimant the Agent at Rankin, Illinois, for a two hour call, as provided for by Rule 12 of the Agreement, commencing September 1, 1953, and for each day thereafter that a violation occurs when the Carrier requires or permits the local freight crews and/or work train crews to transmit their arrival and tie-up time ("OS" Train Report) also to report the block clear to the train dispatcher at a time when the Agent-Operator at Rankin is off duty.

Rankin, Illinois is located on the Peoria Division of Carrier's railroad. The working force at Rankin consists of an Agent-Operator under the Telegraphers' Agreement and a clerical employe under the Clerks' Agreement.

The position of the Agent-Operator is one of seven days, with a work week of Wednesday through Sunday with Monday and Tuesday as rest days. His hours are from 6:30 A. M. to 3:30 P. M. with one hour out for meals.

There is no violation of the Scope Rule or any other rule of the agreement. Reporting in the clear in the instant case is no different than the practice traditionally and historically followed ever since the introduction of the telephone. The claim is solely a demand for a penalty in the form of having work performed on an overtime basis for which there is no contractual or practical basis. The claim is without merit and should be denied.

All that is contained herein is either known or available to the Employees and their representatives.

**OPINION OF BOARD:** The town of Rankin, Illinois is located on the Peoria Division of Carrier's railroad, and the work force there consists of an Agent-Operator, the Claimant in this controversy, and a clerical Employee, not involved herein under the Clerk's Agreement. The Agent-Operator is scheduled to work from 6:30 A. M. to 3:30 P. M. with one hour off for meal, five days a week, with two days off as rest days. Under the Carrier's operating arrangements there is a local train crew tying up each night at Rankin after the Agent's tour of duty, and when they tie-up they frequently report themselves "OS", as in the clear, by telephone to the Train Dispatcher in another community by using a telephone installed outside and attached to the station building.

This claim was filed by the Organization on behalf of the Agent-Operator requesting the remedy stated in Part (b) above. The Carrier has denied the claim.

The Third Division Board in Award No. 4516 sustained three claims, which are in all practical respects, identical to the instant claim. We think the decision in Award No. 4516 is sound and well reasoned. We are unable to find anything in the instant case which would warrant overruling or modifying the Board's decision in Award No. 4516. Consequently we will sustain the claim.

**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 Employee involved in this dispute are respectively Carrier and Employee 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 violated.

#### AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 16th day of February, 1962.

CARRIER MEMBERS' DISSENT TO AWARD 10356, DOCKET TE-8456

The Majority's decision in Award 10356 is not only palpably wrong, but is obviously the result of disregarding the facts in the first instance, and then basing their decision on Award 4516.

A search of the record for any competent evidence to support the Majority's "O.S." allegation would be entirely in vain. The Carrier, in fact, proved that no such "OS." is given. The crew merely reports "in the clear", and this is done by train and engine crew members on railroads throughout the country thousands of times each day. Not only is this not exclusively telegraphers' work, but it is an obvious fact that seldom would a telegrapher be in a position to determine when a train and/or engine is "in the clear", unless of course, as the Organization has suggested, a telegrapher be employed on each and every train for that purpose.

The Majority's remark to the effect the claims in Award 4516 were "in all practical respects identical to the instant claims", is simply further proof that the Majority did not know, or chose to ignore, what the instant claim was all about, although the record was abundantly clear.

The Majority's decision in Award 10356 is palpably wrong, and is so completely lacking in reasoning and logic as to make it a nullity. It should forever be so treated.

**F. J. Goebel (Pet. R. E. B.)**

**R. E. Black**

**G. L. Naylor**

**R. A. DeRossett**

**O. B. Sayers**