

Award No. 11306
Docket No. TE-9926

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Wesley Miller, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk and Western Railway that:

The Carrier violated the Agreement between the parties when it required or permitted employees not covered by the Agreement to receive or transmit messages when:

1(a) At Bluefield Yard, West Virginia, on July 31, August 7 and 14, 1956 a yardmaster received and copied messages from the train dispatcher.

(b) Carrier shall now compensate in the amount of a day's pay each: M. A. Mills on July 31, 1956; B. H. Miller on August 7, 1956; A. C. Scott on August 14, 1956.

2(a) At Kinney, Virginia on June 6, 1956 an Assistant Yardmaster received, copied and delivered a message from the train dispatcher at a time when the operator was off duty.

(b) Carrier shall now compensate T. D. Carter, Operator at Kinney, in the amount of a minimum call payment.

3(a) At Buena Vista, Virginia on June 17, 1956, a clerk received, copied and delivered a message at a time when the Agent-Operator was off duty.

(b) Carrier shall now compensate M. T. Ramsey, Agent-Operator at Buena Vista, in the amount of a minimum call payment.

4(a) At Crewe Yard, Virginia on July 6, 1956, a clerk transmitted a message (consist) to the operator at Kinney, Virginia.

(b) Carrier shall now compensate the senior idle employee (extra preferred) on the seniority district in the amount of one day's pay.

5(a) At Bridge 5 Yard, Virginia on September 3, 1956 an Assistant Yardmaster transmitted a message to the train dispatcher.

(b) Carrier shall now compensate the senior idle employe (extra preferred) on the seniority district in the amount of one day's pay.

6(a) At Waverly, Virginia on October 7, 1956, an Assistant Trainmaster received and copied a message at a time when the agent-operator was off duty.

(b) Carrier shall now compensate J. B. Kegley, agent-operator at Waverly, in the amount of a minimum call payment.

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

CLAIM NO. 1 — BLUEFIELD YARD, WEST VIRGINIA

Bluefield Yard is a freight yard located at Bluefield, West Virginia on the Pocahontas Division of the Carrier and is a terminal for both Pocahontas Division and Radford Division trains and the mine run trains and switchers serving the coal fields in that area. The Carrier's division offices are also located at Bluefield and there is a telegraph office, known as "BF" Office, which provides continuous service and handles communication business of both the division offices and Bluefield Yard.

On July 31, 1956 Yardmaster Tyree employed at Bluefield Yard, by use of the railroad telephone, received and copied the following message:

"10:10 P. M. filed — Roanoke, July 31, 1956

B G Lilly

No 93 condr Thompson and engineer Jewell Blfd about 11 P. M.
16 hours up at 11:45 P. M. protect.

C H Hale 11:15 P. M."

On August 7, 1956 Yardmaster Tyree employed at Bluefield Yard, by use of the railroad telephone, received and copied the following message:

"10:45 P. M. Roanoke, Va. August 7, 1956

B G Lilly

No 93 arrive east Bluefield about 11:15 P. M. 16 hours up for engineer at 11:45 P. M. and conductor at 12 midnight. Arrange to prevent violation of 16 hour law.

C H Hale"

On August 14, 1956 Yardmaster Tyree employed at Bluefield Yard received and copied the two following messages:

"9:05 P. M. Roanoke, Va. August 14, 1956

B G Lilly

Roanoke Yard is unable to take any coal after 7:30 P. M. train until further advised.

C H Hale 9:09 P. M."

4643	5416	6487	7076
4733	5468	6758	7153
			7154

Denial of all claims in the instant case is respectfully requested.

All material used in this submission was presented to or was known by the Employees while this claim was being progressed on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: The issues involved herein are not materially distinguishable from those recently adjudicated by this Board in Awards 10425, 10525, and 10823 — in which the same Parties were involved, the same Agreement, and virtually the same theories of argumentation. Actually, this is a companion case to the one decided in Award 10525 — which pertained to the uniting of 36 claims.

We are cognizant of the fact that we are not compelled to follow our own current Awards on the same property; however, repudiating these recent decisions (in which three neutral referees participated) could possibly result in chaos on the property and be tantamount to an act of irresponsibility on our part. Referee Garrison stressed the pitfalls in this regard in a well-written treatise prepared some twenty five years ago.

Although the debates between these Parties are not one-sided (their respective argumentations being almost frustratingly equal in force), we are not at all prepared to say that our said prior current precedential Awards on this property are palpably erroneous.

We, therefore, follow them.

On the basis of the aforementioned Awards, Items 1, 2, 3, 4, and 5 of the present Claim must be denied. By authority of Award 10823, we are justified in sustaining Item 6 of the Claim. We are of the opinion that this portion of the Claim, which clearly pertains to the operation and movement of trains and involves a station where there was a duly assigned and available agreement-covered employe, the agent-operator, should be allowed.

Having resolved this matter on the grounds set forth above, we do not reach other issues raised by or in behalf of the Parties.

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 of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated only in reference to Item 6 of the Claim.

AWARD

Items 1, 2, 3, 4, and 5 of Claim denied.

Item 6 of Claim allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of April 1963.