

Award No. 11506

Docket No. TE-9563

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

NORFOLK SOUTHERN RAILWAY COMPANY

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

1. The Carrier violated the agreement between the parties when it required or permitted employes other than those covered by the Telegraphers' Agreement (bridgetenders) to "OS" (report) trains to the train dispatcher by telephone in the following instances:

Place	Date	Train No. Reported	Time Reported
Pasquotank River	1/22/56	99	3:45 P. M.
A & C Canal	3/31/56	99	2:35 P. M.
Pamlico River	3/26/56	63	5:38 A. M.
Pasquotank River	3/31/56	98	11:19 A. M.
Albemarle Sound	3/26/56	63	3:06 A. M.
Pamlico River	3/25/56	99	9:54 P. M.
A & C Canal	4/11/56	98	9:30 P. M.
Albemarle Sound	3/21/56	63	4:00 A. M.
" "	3/27/56	63	5:10 A. M.
" "	3/30/56	63	5:40 A. M.
" "	4/2/56	63	4:32 A. M.
" "	4/3/56	63	5:14 A. M.
" "	4/16/56	63	3:50 A. M.
" "	4/9/56	63	4:01 A. M.
" "	4/23/56	64	11:59 P. M.

Place	Date	Train No. Reported	Time Reported
Albemarle Sound	4/19/56	63	4:57 A. M.
" "	4/24/56	63	4:35 A. M.
" "	5/1/56	63	5:07 A. M.
Waddill	4/12/56	64	11:40 P. M.
Pamlico River	5/16/56	99	5:55 P. M.
" "	5/21/56	63	4:50 A. M.
" "	5/22/56	64	12:38 A. M.
" "	5/22/56	63	5:31 A. M.
" "	5/23/56	99	5:53 P. M.
Albemarle Sound	5/14/56	63	2:06 A. M.
" "	5/23/56	64	12:35 A. M.
Pasquotank River	5/26/56	99	3:15 P. M.
A & C Canal	5/23/56	64	5:13 A. M.
Albemarle Sound	5/28/56	63	2:56 A. M.
" "	6/2/56	64	1:45 A. M.
" "	6/2/56	63	6:35 A. M.
" "	6/3/56	64	12:12 A. M.
" "	6/5/56	64	3:50 A. M.
A & C Canal	5/30/56	64	5:03 A. M.
" " "	6/2/56	63	1:35 A. M.
Pamlico River	5/30/56	99	6:55 P. M.
A & C Canal	6/6/56	64	6:00 A. M.
" " "	6/10/56	64	5:07 A. M.
" " "	6/28/56	98	4:46 P. M.
" " "	6/30/56	64	6:55 A. M.
" " "	7/22/56	98	8:02 P. M.
" " "	8/8/56	64	7:00 A. M.
" " "	8/17/56	64	6:34 A. M.
" " "	8/22/56	64	3:50 A. M.
" " "	8/26/56	98	10:06 A. M.
" " "	8/29/56	63	10:50 A. M.
" " "	8/29/56	64	4:53 A. M.
Pasquotank River	6/13/56	64	3:10 A. M.

Place	Date	Train No. Reported	Time Reported
Pasquotank River	6/16/56	99	4:05 P. M.
" "	7/6/56	99	3:50 P. M.
" "	7/7/56	99	3:10 P. M.
" "	7/7/56	98	11:14 A. M.
" "	7/10/56	64	2:50 A. M.
" "	7/22/56	98	7:08 P. M.
" "	7/27/56	64	5:35 A. M.
" "	8/7/56	63	1:47 A. M.
" "	8/7/56	64	2:24 A. M.
" "	8/8/56	64	4:57 A. M.
" "	8/25/56	64	7:29 A. M.
" "	8/25/56	98	9:02 A. M.
" "	8/19/56	98	11:42 A. M.
" "	8/26/56	98	9:21 A. M.
" "	9/4/56	63	12:55 A. M.
" "	9/7/56	63	6:12 A. M.
Albemarle Sound	6/6/56	63	7:25 A. M.
" "	6/9/56	64	12:35 A. M.
" "	6/11/56	63	3:35 A. M.
" "	6/12/56	64	12:07 A. M.
" "	6/12/56	63	5:40 A. M.
" "	6/15/56	64	1:30 A. M.
" "	6/22/56	63	5:35 A. M.
" "	6/23/56	99	5:01 A. M.
" "	6/24/56	99	4:02 A. M.
" "	6/30/56	63	5:10 A. M.
" "	7/3/56	63	5:20 A. M.
" "	7/4/56	64	1:46 A. M.
" "	7/20/56	63	5:55 A. M.
" "	7/22/56	64	12:40 A. M.
" "	8/5/56	64	1:45 A. M.
" "	8/7/56	63	4:05 A. M.
" "	8/8/56	64	1:23 A. M.

Place	Date	Train No. Reported	Time Reported
Albemarle Sound	8/8/56	63	7:08 A. M.
" "	8/11/56	64	1:27 A. M.
" "	8/12/56	64	12:18 A. M.
" "	8/14/56	64	12:20 A. M.
" "	8/15/56	63	5:32 A. M.
" "	8/18/56	64	2:21 A. M.
" "	8/18/56	63	6:13 A. M.
" "	8/30/56	63	4:08 A. M.
" "	8/19/56	64	12:31 A. M.
" "	8/20/56	63	2:35 A. M.
" "	8/22/56	63	5:13 A. M.
" "	8/28/56	64	1:20 A. M.
" "	8/28/56	98	7:00 A. M.
Pamlico River	6/4/56	99	5:52 P. M.
" "	6/5/56	99	6:52 P. M.
" "	6/7/56	99	5:40 P. M.
" "	6/13/56	99	7:32 P. M.
" "	6/30/56	63	7:43 A. M.
" "	8/21/56	64	1:08 A. M.
" "	8/25/56	63	9:00 A. M.
" "	8/26/56	99	7:59 P. M.
" "	8/28/56	63	6:36 A. M.
Albemarle Sound	8/25/56	64	4:55 A. M.
" "	8/25/56	63	6:12 A. M.
" "	8/25/56	98	6:56 A. M.
" "	9/1/56	63	7:00 A. M.
" "	9/1/56	99	3:55 P. M.
" "	9/3/56	64	10:05 P. M.
" "	9/4/56	63	2:38 A. M.
" "	9/5/56	63	5:31 A. M.
" "	9/7/56	64	12:55 A. M.
" "	9/10/56	63	2:35 A. M.
" "	9/11/56	64	12:10 A. M.

Place	Date	Train No. Reported	Time Reported
Albemarle Sound	9/11/56	63	5:48 A. M.
" "	9/12/56	63	7:05 A. M.
" "	9/16/56	64	3:32 A. M.
Pasquotank River	9/8/56	64	1:20 A. M.
" "	9/12/56	63	4:35 A. M.
" "	9/18/56	64	3:29 A. M.
" "	9/18/56	63	4:50 A. M.
" "	10/5/56	64	6:25 A. M.
" "	9/9/56	99	3:35 P. M.
Pamlico River	8/27/56	99	6:05 P. M.
" "	9/3/56	63	7:40 A. M.
" "	9/3/56	99	7:01 P. M.
" "	9/17/56	99	6:35 P. M.

2. As a consequence of said violations the Carrier shall now be required to compensate the senior idle operator, extra in preference, for a minimum of a day's pay of eight (8) hours for each day that such train reports were made at the points specified.

EMPLOYEES' STATEMENT OF FACTS: The locale of the railway from which these claims spring is the Carrier's Northern District extending from Norfolk, Virginia, to Marsden, North Carolina, a distance of 130 miles. A & C Canal Drawbridge is situated at Mile Post 10 (ten miles out of Norfolk), Carrier employs two drawbridge tenders to open and close the bridge for water and rail traffic during each of their shifts of duty. Carrier has installed its train dispatching telephone at this point to be used in connection with obtaining "OS" reports of trains passing this point. The dispatcher can ring in the drawbridge tender for inquiries in the event a train is not reported.

Pasquotank River Drawbridge is located at Mile Post 41.4. There are also two drawbridge tenders assigned at this point where, too, there is a train dispatching telephone wired into the structure by which the dispatcher may ring for or otherwise obtain the "OS" report of passing trains.

Albemarle Sound Drawbridge is at Mile Post 79, and there are three shifts of drawbridge tenders assigned. The train dispatcher's telephone is installed by which the train dispatcher obtains "OS" reports of passing trains, either by ringing drawbridge tender or at the instance of the tender.

Pamlico River Drawbridge is located at Mile Post 126. Two tenders are assigned. The dispatcher's telephone circuit is installed by which the tenders at this point "OS" passing trains to the dispatcher.

Carrier's operating rules which confirm the fact that the duty of O Sing (reporting trains) is that of an Operator under the Telegraphers' Agreement are as follows:

the train dispatcher; that in fact there is no space provided on the official train sheet used to maintain the Dispatchers' Record of Train Movements for the entry of such "OS" report at such locations; that the giving of such information to the dispatchers by the bridgetenders is a voluntary matter and not required by the carrier, and is merely the result of a practice that originated many years ago and has continued, and that the drawbridge tenders are neither required or instructed to do so.

As was aptly stated in Award 1983 (Third Division) Referee Bakke participating:

"It will be noted that before the items of work become exclusively the property of the telegraphers under the scope rule that the items must be "of record", which means that the conversations are important enough in the operation of the railroad to be made matters of record."

and, as stated above, that has long been the criteria urged and used by the petitioners to determine the exclusiveness of work to their class.

Respondent, in conclusion, reiterates that the drawbridge tenders are neither required nor instructed to inform the train dispatcher of the passing of trains at their bridges; that such alleged "OS" report is not made a matter of record on the dispatchers' train sheet (which, as stated, is the official and regulatorily required record on which the operation of trains from terminal to terminal, must be entered); that this action on the part of the bridgetenders is through a practice that has long existed the same as they report weather conditions, storms or tide conditions at their bridges, and that such alleged "OS'ing" does not come within the criteria of the "matters of record" which has long been urged and used by petitioners to determine the exclusiveness of work to their craft.

Respondent holds that the claim is without merit or contractual foundation, and that same should be denied, and we urge that your honorable board so hold.

All of the data contained herein has been discussed with the employe representatives, either in conference or by correspondence, and/or is known and available to them.

(Exhibits not reproduced.)

OPINION OF BOARD: It is 126 miles from terminal-to-terminal on Carrier's Northern District. On this District it has only one open telegraph office, Plymouth, hours 5:00 P. M. to 8:00 A. M., 7 days per week, where an employe covered by Telegraphers' Agreement is employed. Over this stretch there are five drawbridges each manned by a bridgetender in Carrier's employ. The claim in this case is predicated upon bridgetenders informing a dispatcher, by telephone, as to the time when trains pass the bridges at which they are stationed.

The record makes clear that some of the bridgetender reports were made to the dispatcher without solicitation. Other of the reports were solicited by the dispatchers via telephone.

Upon the information obtained by the solicited or unsolicited reports the dispatcher, in some instances gave the two-hour notice to relieving train crews; and, at least once, used such information in the preparation of a train line-up.

The claim alleges more than 100 instances in the period from January 22 to September 17, 1956, inclusive, in which reports as to time of a train passing a particular bridge were made by a bridgetender, via telephone, to the dispatcher. In view of the extended period we conclude that Carrier knew, or is chargeable with knowledge of the practice engaged in by its dispatchers and the bridgetenders. This is buttressed by the apparency that in the execution of his duties the dispatcher would have need, at times, of intelligence as to the where-about of a train over 126 miles of track.

Telegraphers contend that the reporting of a train passing a given point, by telephone, to a dispatcher for his information in the execution of his duties, is reserved to employes covered by the Agreement between it and Carrier.

Carrier's defense is that: (1) "drawbridge tenders are neither instructed nor required to inform the dispatcher of the passing of trains at their locations, and any such reporting as they may allegedly do is voluntary on their part, and no entry is made of same on the train sheets nor is such reporting made a matter of record;" and, (2) the transmittal of the information, by telephone, is not the exclusive work of Telegraphers.

We look, first, to the Scope Provisions of the Agreement, which reads:

"ARTICLE 1.

"Scope.

"The following rules, working conditions, and rates of pay will apply to all telegraphers, telephoners (except switchboard operators), agent-telegraphers, agent-telephoners, clerk-telegraphers, levermen, towermen, operators of mechanical telegraph machines, block operators, such station agents (freight or ticket), and assistant agents as are herein listed, hereinafter referred to as employes, and such additional positions as may be hereafter created or established within this scope."

This Article, it will be noted, only sets forth job titles — not a description of the work covered by the Agreement. In interpreting such an Article the only aid available to us is evidence of history, traditions and custom, on this particular Carrier's system, as to the work exclusively performed by employes holding positions with the listed job titles; or, other admissible evidence tending to prove the intent of the contracting parties.

In the entire Agreement there is only one provision which expressly reserves to Telegraphers a defined type of work. It is Article 15 — Handling Train Orders — which reads:

"No employes other than covered by this schedule and train dispatchers will be permitted to handle train orders at telegraph or telephone offices where an operator is employed and is available, or can be promptly located; except in emergency, conductors or engineers will be permitted to do so, in which case the telegrapher will be paid for the call."

Telegraphers do not contend, in this case, that the reporting of the time at which a train crossed a drawbridge comes within this Article. Instead, they assert that the reporting is the "OS"ing of trains and the dispatchers use of such information in notifying relieving train crews and in train line-ups is in connection with the movement of trains.

With the foregoing as prologue, the basic issue, with which this Board is confronted, is whether the reporting by a drawbridge tender, to a dispatcher, of the time at which a train passed his location is work which the Scope Provision of the Agreement reserves exclusively to Telegraphers. We find that it is not proven in the record, by a preponderance of the evidence, that historically by custom or tradition a telephoned report as to the time a train passed a given point on the Carrier's system is work that has been exclusively reserved to Telegraphers.

The numerous awards cited by the parties, when read together, point up the long continuing dispute, since the advent of the telephone, between Carriers and Telegraphers relative to the use of such instruments, by crafts or classes other than Telegraphers. Notwithstanding the history of the dispute the parties have continued to negotiate and enter into contracts which have not resolved it. Looking at the large number of cases, involving this basic dispute, which have been processed to this Board, it appears that both Carriers and Telegraphers seek to obtain from this Board, through the decisional process, favorable interpretation and application of ambiguous Scope Provisions of collective bargaining Agreements which, in design, ignore the historical dispute. Because the Board, in each case, is confined to the record made by the parties; and, type and measure of evidence differs from case to case, comparison of Awards, *in vacuo*, may create the impression that they are conflicting.

Where the Agreement, as in the instant case, does not define the work reserved exclusively to Telegraphers; but, merely lists job titles, the established rule to which this Board adheres is: When Telegraphers claim that a certain type of communication by telephone is within the Scope Provision of the Agreement, it must prove, by a preponderance of the evidence, that the work on the system of the Carrier involved, has been by history, tradition and custom exclusively performed by employees holding positions with the job titles listed in the Scope Provision. Cf. Award No. 10954. Telegraphers have not adduced this measure of proof in this case. We will deny the claim.

Telegraphers aver that "The basic issue [in this case] has been fully determined in Award 11300, rendered by the Board on April 3, 1963." In the cited Award the parties to the proceeding and the Agreement involved were the same as herein.

In Award No. 11300 the Board found that "The Carrier admits that the transmission of 'OS' reports that are made a matter of record on the dispatchers record of train movements is work that belongs to telegraphers." This finding of fact is *res adjudicata* in Award No. 11300. It has no probative value in the instant case, as Telegraphers contend. The record now before us contains no like admission by Carrier. We are compelled to decide each case only on the facts which are of record therein plus those facts which are within the categories of judicial notice or common knowledge or the privilege of expertise which the Board enjoys. The found admission in Award 11300 does not meet any of the exceptions to the exclusion of extrinsic evidence.

The record in this case does contain an offer of settlement, by Carrier, as to one alleged violation. It was rejected by Telegraphers. A bare offer of settlement is not an admission and does not constitute evidence proving a violation.

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 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 13th day of June 1963.