

Award No. 11707
Docket No. TE-9925

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
GULF, MOBILE AND OHIO RAILROAD COMPANY**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile and Ohio Railroad, that:

1. Carrier violated the agreement between the parties when it required or permitted employes not covered by the agreement to transmit reconsignment (diversion) messages: At the General Offices, Mobile, Alabama, on October 15, 22 and December 24, 1956; at the District Offices, Montgomery, Alabama on October 15, 1956; at the Agent's Office, Tuscaloosa, Alabama, on March 11, 1957.

2. Carrier be required to compensate the senior idle employe (extra preferred) on the Southern District in the amount of one day's pay on each of the dates set forth in Part 1 of this claim.

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

This Carrier maintains its General Offices in Mobile, Alabama. For many years there was a telegraph office in the building handling communication service for the various officers of the Carrier. About ten years ago this telegraph office was discontinued and the position abolished, leaving the continuously operated telegraph office at Bureaugard Yard as the communication office for Mobile.

On October 15, 1956 at 3:24 P. M., a clerk, an employe not covered by the agreement, in the General Freight Agent's Office, transmitted the following message to the operator at Artesia, Mississippi:

W L A
Artesia

"Mobile Oct 15, 1956

Sou 31559 Min Wool Kansas City, Mo Oct 12th destined Miami, Fla. routed GM&O SAL. Reconsign to same at 509 Northwest 76th

tive August 21, 1954 provides that the practice of using clerical employes to perform communication duties was clearly recognized and approved. On December 18, 1951, and again on August 14, 1957, the Telegraphers' Organization proposed a change of the Agreement which would expand and enlarge the present Agreement to such an extent that it would give to Telegraphers the exclusive right to handle other communications in addition to train orders. Neither proposal has been agreed to.

The prior decisions of this Board clearly support the Carrier's position. A sustaining award could only mean unnecessary waste of revenue and manpower, as well as inefficiency in complying with the requests of shippers when they desire immediate reconsignment or diversion of traffic.

The claim is totally without merit and should be declined.

Carrier reserves the right to make an answer to any further submission of the Organization.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue here is whether telegraphers have the exclusive right to telephone information pertaining to reconsignments or diversions of freight traffic.

Like many other agreements between Labor Organizations and Carriers, the Scope Rule in the Agreement here involved does not describe the work or duties of the covered positions. Under these circumstances we need to ascertain the traditional, historical and customary past practice on the property.

Petitioner has failed to present on the property or in its submission any evidence to support its allegations. There is no statement of fact in the record to show that historically, traditionally and customarily telephoning of reconsignments or diversions was the exclusive work of telegraphers. The allegations of the Carrier that such reconsignments or diversions "have been handled by clerical employes in the Carrier's Traffic Department since the advent of the telephone" is nowhere directly denied.

There are several Awards of this Division involving the same parties, the same Agreement, the interpretation of the Scope Rule in that Agreement and similar issues. In Award 11343 (Miller) we denied the claim because:

- "1. The language of the Agreement does not (standing alone) dictate a sustaining Award.
2. The Organization failed to present sufficient proof of an established past practice on the property in regard to the issues involved herein."

The same principles apply to this claim. Also see Awards 11331 (Coburn), 10237 (Carey), 8207 (McCoy) and 5256 (Boyd).

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 Carrier did not violate the Agreement.

AWARD

Claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of September 1963.