

Award No. 11724
Docket No. TE-10436

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jim A. Rinehart, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Wabash Railroad, that:

1. The Carrier violated the parties' Agreement when, on April 18, 1957, it permitted or required T. T. Fisher, a Mail Messenger, an employe not covered by the Telegraphers' Agreement, to handle passengers and Flag Train No. 4 at Bement, Illinois, during Claimant's meal period.

2. The Carrier shall, because of the violation set forth above, compensate R. Veech, Agent-Telegrapher at Bement, Illinois, one hour's pay (\$2.37) at the pro rata rate of the position occupied.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective September 1, 1955, as amended.

R. Veech, Claimant in this case, is the regularly assigned Agent-Telegrapher at Bement, Illinois; assigned hours 6:50 A. M. - 3:50 P. M., meal period 11:30 A. M. to 12:30 P. M.

While standing at Decatur, Illinois, operating personnel on Train No. 24 by mistake permitted a passenger bound for Detroit to board the train. The conductor of No. 24 discovered the error after the train had departed Decatur, and let the passenger off the train at Bement at approximately 12:07 P. M. during the meal period of Claimant, so that the passenger could board No. 4, the latter being the correct train for Detroit.

No. 4 is not scheduled to regularly stop at Bement, and because of this, it is evident, that operating personnel on Train No. 24 arranged with a mail messenger, a person holding no employment relationship with the carrier covered by the Parties' Agreement at Bement, to flag No. 4 to entrain the passenger for Detroit.

OPINION OF BOARD: A passenger bound for Detroit boarded in error, train No. 24 at Decatur, Illinois and was permitted to get off at Bement.

T. T. Fisher, a Mail Messenger, not an employe of the Carrier but a Contractor with the Government, flagged train No. 4 so that the passenger might board it.

Claimants say the Carrier violated the agreement when it required or permitted the Mail Messenger to flag train No. 4.

The Organization on behalf of Claimant has presented no evidence that Carrier had anything to do with the Mail Messenger flagging the train or directed him in anyway. It asks how else would the Mail Messenger have known what action to take. That is an assumption. We are asked to take it for granted such was the fact. If it was a fact, testimony of the Mail Messenger or the train crew or conductor of train No. 24 could have been produced. We cannot base an award on supposition or surmise. There is a complete failure of proof of any violation by the Carrier of the Telegrapher's Agreement.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of September 1963.