

Award No. 11742
Docket No. TE-10535

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Nathan Engelstein, 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:

1. Carrier violated and continues to violate the agreement between the parties when it assigns the work of transmitting and/or receiving messages and reports by use of teletypes (mechanical telegraph machines) to employees not covered by the agreement at:

Assistant to Superintendent of Transportation Office, Lamberts Point, Virginia; Yardmaster's Office, Portlock Yard, South Norfolk, Virginia; Yardmaster's Office, Lamberts Point Yard, Lamberts Point, Virginia; Coal Office, Lamberts Point, Virginia; Coal Pier No. 5, Lamberts Point, Virginia; Yard Office, Crewe Yard, Crewe, Virginia.

2. Because of the violations set forth above, Carrier shall compensate the senior idle telegraphers, extra in preference, on the Norfolk Division, in the amount of a day's pay for each eight hour shift at each location (three each day at each location) beginning at 4:00 P. M. on March 4, 1957 at Portlock Yard; 4:00 P. M. on March 21, 1957 at Yardmaster's Office and Coal Office, Lamberts Point; 8:00 A. M. on May 14, 1957 at Ass't Sup't Transportation Office, Lamberts Point; 4:00 P. M. on June 19, 1957 at Coal Pier No. 5, Lamberts Point; 10:50 A. M. on February 5, 1958 at Crewe Yard; continuing thereafter on a day to day basis until the violations are corrected. The beneficial claimants to be determined by a joint check of the Carrier's records.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof. On the initial dates of the claims, the controlling agreement between the parties was one effective December 1, 1939, revised September 1, 1949. This agreement was superseded by the now current agreement effective February 16, 1958. The instant claim begins under one agreement and continues under another but no rule changes were made which create any difference between the claim dates prior to February 16, 1958 and those subsequent thereto.

an intent not to change the existing interpretations. This Carrier and the Telegraphers' Organization at the time of the adoption of the Scope Rule into the Agreement effective September 1, 1949, and the current Agreement effective February 16, 1958, were fully cognizant of the fact that under the previous Agreements the work of transmitting and receiving messages and reports by teletype-printers located outside of telegraph offices was not being treated as exclusively reserved to the classes of employees listed in the Telegraphers' Agreement. Consequently, as your Board said in Third Division Award 4791, it must be held that the re-adoption of the rule, in the effective Agreement in the instant case as well as in other earlier Agreements, was not intended to change the meaning previously given to it.

PART VIII

Third Division Awards

The Carrier's position as set forth in this submission clearly proves that there is no merit whatever to the Employees' claims in this case. In support of its position, the Carrier cites the following Third Division Awards:

652	2679	4643	4889	5318	5619	6007	6603	6788	6996	7154
653	3003	4733	4922	5404	5660	6159	6604	6824	7031	7401
700	4464	4791	5079	5416	5702	6363	6758	6903	7066	7402
752	4512	4827	5109	5468	5777	6364	6778	6929	7076	7403
1708	4585	2879	5120	5564	5866	6487	6779	6959	7153	

The Carrier desires to point out that the jurisdiction of the Third Division, National Railroad Adjustment Board, is limited to the matter of interpretation or application of agreements and that such Division has no jurisdiction whatsoever to write any agreement or to read any non-existent rule into an agreement, which it would be doing if it sustained the instant claims. Denial of the six claims in the instant case is, therefore, 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 ultimate and narrow issue presented by this dispute is whether the Carrier is obligated by its agreement with the telegraphers to assign an employee of that class or craft to attend teletype machines which have been installed at places where no telegraphers are employed for the sole purpose of receiving communications which formerly were received by means of the telephone from nearby telegraph offices.

While the record indicates that these parties have established certain rights and obligations concerning the use of teletype equipment, there is no showing that the Carrier has obligated itself in the manner contended for by the Employees.

It is well established that in disputes of this nature the complaining party must present convincing proof in support of its position. This the Employees have failed to do, and their claim, therefore, must be denied.

In view of this conclusion it is unnecessary to consider other questions raised in the record.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 no violation of the Agreement has been established.

AWARD

Claim denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1963.