

Award No. 11812
Docket No. TE-10007

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

William N. Christian, Referee

PARTIES TO DISPUTE:

**THE ORDER OF RAILROAD TELEGRAPHERS
SOUTHERN RAILWAY COMPANY**

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

1. Carrier violated the Scope Rule of the Agreement when on July 24, 25, 26, 27, 30, 31, August 1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, and September 10, 1956, it required or permitted Maintenance of Way Foreman L. M. Brooks, an employe not covered by the Telegraphers' Agreement, to communicate with and transmit messages of record by telephone to the Chief Dispatcher at Knoxville, Tennessee, from Bluff City, Tennessee.
2. Carrier shall now compensate C. H. Foster, Agent-Telegrapher, Bluff City, Tennessee, for one call for each date the Agreement was violated, as shown in paragraph 1.
3. Carrier violated the Scope Rule of the Telegraphers' Agreement when on August 9 and 10, 1956, it required or permitted Maintenance of Way Foreman R. W. Scroggins, an employe not covered by the Telegraphers' Agreement, to communicate with and transmit messages of record by telephone to Chief Dispatcher J. F. Ayers at Greenville, South Carolina from Gastonia, North Carolina.
4. Carrier shall now compensate J. J. Youngblood, who was idle and available on his rest day, eight (8) hours at the time and one-half rate of pay for August 9 and 10, 1956.
5. Carrier violated the Scope Rule of the Telegraphers' Agreement when on August 13, 20 and September 4, 1956, it required or permitted Maintenance of Way Foreman R. W. Scroggins, an employe not covered by the Telegraphers' Agreement, to communicate with and transmit messages of record by telephone to Chief Dispatcher J. F. Ayers at Greenville, South Carolina from Gastonia, North Carolina.
6. Carrier shall compensate J. R. Sherrill, who was idle and available on his rest day, for eight (8) hours at time and one-half rate for August 13, 20 and September 4, 1956.

which they are based, and the Board has no jurisdiction over them and should dismiss them for want of jurisdiction.

(c) Neither the Scope Rule nor any other provision contained within the four corners of the Telegraphers' agreement here in evidence has been violated. That the monopolistic right here claimed by the ORT has not been granted has also been recognized by the ORT. Furthermore, practices under the agreement in evidence and the Brotherhood's action support, without question, the inescapable conclusion that there is no basis for the claims.

(d) Prosecution by the ORT of the silly claims which it has here presented is nothing more than part of a concerted effort to obtain work and unearned compensation at the expense of the Carrier, the net effect, if granted, being that new rules and conditions of employment would be established having the effect of requiring the Carrier to revert to the horse and buggy days of railroading.

Claims, being barred and the Board not having jurisdiction over them, should be dismissed for want of jurisdiction. If, however, despite this fact, the Board assumes jurisdiction, it cannot do other than make a denial award.

Carrier, not having seen the ORT's submission, reserves the right after doing so to present such additional evidence and argument as may be necessary.

All evidence here submitted in support of Carrier's position is known to employe representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier's claim of fatal variance, between the claim as handled on the property and the claim as presented here, is without merit.

Carrier's claim of bar under Article V, 1 (a) of the applicable August 21, 1954 National Agreement is without merit.

Affidavits attached to Carrier's ex parte submission are excluded from our consideration on like grounds as in Award 11128 (Boyd).

Interpretation and application of the Scope Rule determines the case on the merits. The critical question is:

Did Claimants, by tradition, custom and practice on this property, perform the work to the exclusion of others?

Awards 11592 (Stark), 10918 (Boyd), 10425 (Dolnick), 9953 (La Driere), and others. The burden of proof is on the Employes.

The work in question is the originating transmission of information from Maintenance of Way Foremen, in charge of track repair and maintenance gangs, using the railroad telephone at various locations on line of road in requesting the Chief Dispatcher to issue slow orders and/or conditional stop sign orders for the following day.

(Where the evidence is in conflict as to the geographical origin of the transmission, we have considered, without deciding, that state of facts most favorable to Employes.)

The Employees have not sustained the burden of proving that Employees have performed the specific work above described to the exclusion of others on this property.

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 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 25th day of October 1963.