

Award No. 11817
Docket No. TE-10271

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 Telegraphers' Agreement when on November 9, 1956, at approximately 3:07 P. M. it required or permitted Extra Gang Foreman H. Byers, an employee not covered by the Telegraphers' Agreement, to perform the work of transmitting messages of record by telephone at Johnson City, Tennessee.

2. Carrier shall compensate H. K. Watson, Clerk-Telegrapher, Johnson City, Tennessee, for one call (two hours and forty minutes at the time and one-half rate of pay for November 9, 1956.

EMPLOYEES' STATEMENT OF FACTS: Mr. H. K. Watson is the regular assigned Clerk-Telegrapher at Johnson City, Tennessee. On Friday, November 9, 1956, Claimant Watson was off duty when Extra Gang Foreman H. Byers used the telephone at Johnson City, Tennessee, at approximately 3:07 P. M. to call the dispatcher, W. O. Craig, at Knoxville, Tennessee. Extra Gang Foreman Byers sent the following two messages:

"W. O. Craig, C.D. Knoxville, Tenn.

Johnson City, Tenn.
11/9/56

Conditional stop sign for Westbound trains will be located at Mile Post 30A and for Eastbound trains will be located at Mile Post 33A, from 11:00 AM to 6:00 PM November 12, 1956.

s/ H. BYERS 306 PM"

(b) Neither the Scope Rule nor any other provision contained in the Telegraphers' Agreement here in evidence has been violated. That monopolistic rights here claimed by the ORT have 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 demand here made.

(c) Prosecution by the ORT of the absurd claim 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 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, as well as the establishment of a make-work or feather-bedding scheme.

Claim being barred and the Board having no jurisdiction over it should dismiss it for want of jurisdiction. If, 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: This case is the same in all material respects as in Docket No. TE-10007, Award No. 11812. We adopt the opinion therein as determinative of the issues in this case.

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 25th day of October 1963.